

8-5-2013

State v. Brooks Clerk's Record v. 1 Dckt. 41046

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LAW CLERK

Vol. 1 of 3

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

STATE OF IDAHO,

**Plaintiff-
Respondent,**

-vs-

MATTHEW O. BROOKS,

**Defendant-
Appellant.**

Appealed from the District of the Third Judicial District
for the State of Idaho, in and for Canyon County

Honorable THOMAS J. RYAN, District Judge

Sara Thomas
State Appellate Public Defender
3050 N. Lake Harbor Lane, Ste. 100
Boise, Idaho 83703

Attorney for Appellant

Lawrence G. Wasden
Attorney General
Statehouse
Boise, Idaho 83720

Attorney for Respondent



41046

STATE OF IDAHO,

-VS-

Defendant-
Appellant.

Supreme Court No. 41046-2013

HONORABLE THOMAS J. RYAN, Presiding

Attorney for Appellant

Attorney for Respondent

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State of Idaho vs. Matthew O Brooks

Felony

Date		Judge
5/14/2012	New Case Filed-Felony	Dayo O Onanubosi
	Affidavit Of Probable Cause	Dayo O Onanubosi
	Criminal Complaint	Dayo O Onanubosi
	Hearing Scheduled (Arraignment (In Custody) 05/14/2012 01:32 PM)	Dayo O Onanubosi
	Hearing result for Arraignment (In Custody) scheduled on 05/14/2012 01:32 PM: Hearing Held	Dayo O Onanubosi
	Hearing result for Arraignment (In Custody) scheduled on 05/14/2012 01:32 PM: Arraignment / First Appearance	Dayo O Onanubosi
	Hearing result for Arraignment (In Custody) scheduled on 05/14/2012 01:32 PM: Constitutional Rights Warning	Dayo O Onanubosi
	Hearing result for Arraignment (In Custody) scheduled on 05/14/2012 01:32 PM: Order Appointing Public Defender	Dayo O Onanubosi
	Hearing result for Arraignment (In Custody) scheduled on 05/14/2012 01:32 PM: Consolidation Of Files w/CR2012-12215*C	Dayo O Onanubosi
	Hearing result for Arraignment (In Custody) scheduled on 05/14/2012 01:32 PM: Commitment On Bond/\$25,000.00	Dayo O Onanubosi
	Change Assigned Judge	Gregory F. Frates
	Hearing Scheduled (Preliminary Hearing 05/24/2012 08:30 AM)	Gregory F. Frates
5/15/2012	Bond Posted - Surety (Amount 25000.00)	Gregory F. Frates
	Notice of Bond Posted	Gregory F. Frates
	PA's Response For Request For Discovery	Gregory F. Frates
	Request For Discovery	Gregory F. Frates
	Demand For Notice Of Defense Of Alibi	Gregory F. Frates
5/16/2012	Waiver Of Extradition	Gregory F. Frates
5/24/2012	Hearing result for Preliminary Hearing scheduled on 05/24/2012 08:30 AM: Hearing Held	Charles Hay
	Hearing result for Preliminary Hearing scheduled on 05/24/2012 08:30 AM: Preliminary Hearing Waived (bound Over)	Charles Hay
	Hearing result for Preliminary Hearing scheduled on 05/24/2012 08:30 AM: Order Binding Defendant Over to District Court	Charles Hay
	Hearing Scheduled (Arrn. - District Court 06/01/2012 09:00 AM)	Molly J Huskey
	Information	Thomas J Ryan
6/1/2012	District Court Hearing Held	Gregory M Culet
	Court Reporter: Laura Whiting	
	Number of Transcript Pages for this hearing estimated: less than 100 pages	
	Hearing result for Arrn. - District Court scheduled on 06/01/2012 09:03 AM: Hearing Held RYAN-PT-AUG 27@1:30-RYAN-JT-SEPT 25-27@9:00-MORFITT	Gregory M Culet
	Hearing result for Arrn. - District Court scheduled on 06/01/2012 09:03 AM: Arraignment / First Appearance RYAN-PT-AUG 27@1:30-RYAN-JT-SEPT 25-27@9:00-MORFITT	Gregory M Culet

State of Idaho vs. Matthew O Brooks

Felony

Date		Judge
3/1/2012	Hearing result for Arrn. - District Court scheduled on 06/01/2012 09:03 AM: Appear & Plead Not Guilty RYAN-PT-AUG 27@1:30-RYAN-JT-SEPT 25-27@9:00-MORFITT	Gregory M Culet
	Hearing Scheduled (Pre Trial 08/27/2012 01:30 PM)	Thomas J Ryan
	Hearing Scheduled (Jury Trial 09/25/2012 09:00 AM)	James C. Morfitt
	Notice Of Hearing	Court Clerks District (998)
3/5/2012	Request For Discovery	Thomas J Ryan
3/29/2012	Motion to Suppress	Thomas J Ryan
	Memorandum of Law In Support of Motion To Suppress	Thomas J Ryan
	Notice Of Hearing	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 07/23/2012 02:00 PM) Motion to Suppress	Thomas J Ryan
7/23/2012	Hearing result for Motion Hearing scheduled on 07/23/2012 02:00 PM: Continued Motion to Suppress	Thomas J Ryan
	Hearing result for Motion Hearing scheduled on 07/23/2012 02:00 PM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 08/16/2012 01:30 PM) to suppress	Thomas J Ryan
8/2/2012	Pa's First Supplemental Response to Request for Discovery	Thomas J Ryan
8/9/2012	Pa's Second Supplemental Response to Request for Discovery	Thomas J Ryan
8/14/2012	Objection To Motion To Suppress Evidence	Thomas J Ryan
8/15/2012	papers/Notice and Demand For Abatement	Thomas J Ryan
8/16/2012	Hearing result for Pre Trial scheduled on 08/27/2012 01:30 PM: Hearing Vacated	Thomas J Ryan
	Hearing result for Motion Hearing scheduled on 08/16/2012 01:30 PM: Hearing Held to suppress - 14 days for additional briefing	Thomas J Ryan
	Hearing result for Motion Hearing scheduled on 08/16/2012 01:30 PM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
	Hearing Scheduled (Pre Trial 09/18/2012 01:30 PM)	Thomas J Ryan
9/24/2012	Pa's Third Supplemental Response to Request for Discovery	Thomas J Ryan
9/29/2012	Defendant's Supplemental Brief In Support Of Motion To Suppress	Thomas J Ryan
9/30/2012	Motion To Appear Telephonically At Pre-Trial Conference	Thomas J Ryan
9/31/2012	Order allowing def to appear telephonically at PT conference	Thomas J Ryan
	Hearing result for Pre Trial scheduled on 09/18/2012 01:30 PM: Hearing Vacated	Thomas J Ryan
	Hearing Scheduled (Pre Trial 09/18/2012 03:00 PM) Def to appear Telephonically	Thomas J Ryan
10/4/2012	Objection to motion to suppress evidence	Thomas J Ryan
10/10/2012	Order to Provide Auto Recording without Cost	Thomas J Ryan

State of Idaho vs. Matthew O Brooks

Felony

Date		Judge
9/17/2012	Response to State's Objection to Motion to Suppress	Thomas J Ryan
9/18/2012	Hearing result for Pre Trial scheduled on 09/18/2012 03:00 PM: Hearing Held Def to appear Telephonically	Thomas J Ryan
	Hearing result for Pre Trial scheduled on 09/18/2012 03:00 PM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
9/19/2012	Memorandum decision upon motion to suppress	Thomas J Ryan
9/21/2012	Pa's Fourth Supplemental Response to Request for Discovery	Thomas J Ryan
	Motion To Shorten Time For Hearing And Notice Of Hearing	Thomas J Ryan
	Motion To Continue JT And Notice Of Hearing	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 09/24/2012 09:00 AM) motion to shorten time, motion to continue	James C. Morfitt
9/24/2012	Hearing result for Motion Hearing scheduled on 09/24/2012 09:00 AM: District Court Hearing Held Court Reporter: Carole Bull Number of Transcript Pages for this hearing estimated: less than 100 pages motion to shorten time, motion to continue	James C. Morfitt
	Hearing result for Motion Hearing scheduled on 09/24/2012 09:00 AM: Hearing Held motion to shorten time, motion to continue	James C. Morfitt
	Hearing result for Motion Hearing scheduled on 09/24/2012 09:00 AM: Continued motion to shorten time, motion to continue	James C. Morfitt
9/25/2012	Hearing result for Jury Trial scheduled on 09/25/2012 09:00 AM: District Court Hearing Held Court Reporter: Debora Kreidler Number of Transcript Pages for this hearing estimated: less than 100 pages State's Mo to Shorten Time / to Continue	James C. Morfitt
	Hearing result for Jury Trial scheduled on 09/25/2012 09:00 AM: Failure To Appear For Hearing Or Trial State's Mo to Shorten Time / to Continue	James C. Morfitt
	Notice of Bond Forfeiture	James C. Morfitt
	Warrant Issued - Bench Bond amount: 50000.00 Failure to Appear-total bond with CR-2012-12215*C Defendant: Brooks, Matthew O	Thomas J Ryan
	Case Status Changed: Inactive	Thomas J Ryan
9/27/2012	Motion to reconside order denying motion to suppress	Thomas J Ryan
	Motion for permission to appeal	Thomas J Ryan
	Case Status Changed: Reopened	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 10/10/2012 10:30 AM) Motn for Permission to Appeal/ Motn to Reconsider	Thomas J Ryan
10/10/2012	Hearing result for Motion Hearing scheduled on 10/10/2012 10:30 AM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100 pages	Thomas J Ryan
	Hearing result for Motion Hearing scheduled on 10/10/2012 10:30 AM: Hearing Held Motn for Permission to Appeal/ Motn to Reconsider	Thomas J Ryan

State of Idaho vs. Matthew O Brooks

Felony

Date		Judge
10/10/2012	Motion Held - Motn to Reconsider	Thomas J Ryan
	motion to reconsider taken under advisement-court to issue written ruling	Thomas J Ryan
	Objection to Motion for Reconsideration of Order Denying Motion to Supress & Leave for Motion to Appeal	Thomas J Ryan
10/16/2012	Order Denying Motion to Reconsider	Thomas J Ryan
11/19/2012	Order Denying Motion For Permission to Appeal	Thomas J Ryan
2/11/2013	Warrant Returned Failure to Appear-total bond with CR-2012-12215*C Defendant: Brooks, Matthew O/ served in Hillsboro Oregon	Thomas J Ryan
	Inactive	Thomas J Ryan
	Case Status Changed: Inactive	Thomas J Ryan
2/21/2013	status changed to Active	Thomas J Ryan
	Case Status Changed: Pending	Thomas J Ryan
	Hearing Scheduled (Arraignment (In Custody) 02/21/2013 01:30 PM)	James A. (J.R.) Schiller
	Hearing Scheduled (Arraignment (In Custody) 02/21/2013 01:30 PM)	James A. (J.R.) Schiller
	Hearing result for Arraignment (In Custody) scheduled on 02/21/2013 01:30 PM: Hearing Held	James A. (J.R.) Schiller
	Hearing result for Arraignment (In Custody) scheduled on 02/21/2013 01:30 PM: Arraignment / First Appearance	James A. (J.R.) Schiller
	Hearing result for Arraignment (In Custody) scheduled on 02/21/2013 01:30 PM: Order Appointing Public Defender	James A. (J.R.) Schiller
	Hearing Scheduled (Arrn. - District Court 03/01/2013 09:00 AM)	Molly J Huskey
3/1/2013	Hearing result for Arrn. - District Court scheduled on 03/01/2013 09:07 AM: Hearing Held RYAN-FTA-JURY TRIAL JT-MARCH 508@8:30-MORFITT JT-APRIL 23-26@8:30-MORFITT	Dennis E. Goff
	Hearing Scheduled (Jury Trial 04/23/2013 08:30 AM)	James C. Morfitt
	District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: less than 100	Dennis E. Goff
	Notice Of Hearing	Dennis E. Goff
4/4/2013	PD-Request For Discovery	Thomas J Ryan
4/12/2013	Motion To Set Aside Forfeiture And Exonerate Bond And Conditional Request For Hearing (w/order)	Thomas J Ryan
4/13/2013	Notice Of Hearing For Change Of Plea	Thomas J Ryan
	Hearing Scheduled (Change of Plea 03/15/2013 12:30 AM)	Renae J. Hoff
4/15/2013	Hearing result for Jury Trial scheduled on 04/23/2013 08:30 AM: Hearing Vacated	James C. Morfitt
	Hearing result for Change of Plea scheduled on 03/15/2013 01:30 PM: District Court Hearing Held Court Reporter: Kathy Klemetson Number of Transcript Pages for this hearing estimated: less than 100 pages SENT- May 6@2:15PM PCS {F}	Renae J. Hoff

State of Idaho vs. Matthew O Brooks

Felony

Date		Judge
3/15/2013	Hearing result for Change of Plea scheduled on 03/15/2013 01:30 PM: Hearing Held RYAN- SENT- May 6@2:15PM PCS {F}	Renae J. Hoff
	Hearing result for Change of Plea scheduled on 03/15/2013 01:30 PM: Guilty Plea Advisory Form RYAN- SENT- May 6@2:15PM PCS {F}	Renae J. Hoff
	Hearing result for Change of Plea scheduled on 03/15/2013 01:30 PM: Change Plea To Guilty Before H/t RYAN- SENT- May 6@2:15PM PCS {F}	Renae J. Hoff
	Hearing result for Change of Plea scheduled on 03/15/2013 01:30 PM: Order for Pre-Sentence Investigation Report and Substance Abuse Assessment RYAN- SENT- May 6@2:15PM PCS {F}	Renae J. Hoff
	Hearing result for Change of Plea scheduled on 03/15/2013 01:30 PM: Order to Report to District III Probation and Parole	Renae J. Hoff
	Hearing result for Change of Plea scheduled on 03/15/2013 01:30 PM: Order Release to Pre-trial Release Program-to be released at 8:00 a.m. on 3/18/13	Renae J. Hoff
5/6/2013	Hearing Scheduled (Sentencing 05/06/2013 02:15 PM) PSI/SA	Thomas J Ryan
	Hearing result for Sentencing scheduled on 05/06/2013 02:15 PM: Continued PSI/SA	Thomas J Ryan
	Hearing result for Sentencing scheduled on 05/06/2013 02:15 PM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
5/7/2013	Hearing Scheduled (Sentencing 05/07/2013 01:30 PM) PSI & SA	Thomas J Ryan
	Hearing result for Sentencing scheduled on 05/07/2013 01:30 PM: Hearing Held PSI & SA	Thomas J Ryan
	Hearing result for Sentencing scheduled on 05/07/2013 01:30 PM: Withheld Judgment Entered PSI & SA	Thomas J Ryan
	Hearing result for Sentencing scheduled on 05/07/2013 01:30 PM: Sentenced To Fine And Incarceration PSI & SA	Thomas J Ryan
	Hearing result for Sentencing scheduled on 05/07/2013 01:30 PM: Probation Ordered PSI & SA	Thomas J Ryan
	Hearing result for Sentencing scheduled on 05/07/2013 01:30 PM: Notice to defendant upon sentencing	Thomas J Ryan
5/8/2013	Case Status Changed: closed pending clerk action	Thomas J Ryan
	District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
	Restitution Order Filed	Thomas J Ryan
	Restitution Ordered 100.00 victim # 1	Thomas J Ryan

State of Idaho vs. Matthew O Brooks

Felony

Date		Judge
5/9/2013	Surety Bond Exonerated (Amount 25,000.00)	Thomas J Ryan
5/14/2013	Order of probation on withheld judgment	Thomas J Ryan
5/24/2013	Motion For Appointment Of State Appellate Public Defender	Thomas J Ryan
	Notice of Appeal	Thomas J Ryan
	Appealed To The Supreme Court	Thomas J Ryan
3/3/2013	Order Appointing State Appellate Public Defender	Thomas J Ryan

4
PA
5/14/12

FILED
A.M. P.M.
MAY 14 2012

IN THE COURT OF THE 3rd JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,)
Plaintiff,)
)
)
vs.)
)

CANYON COUNTY CLERK
B HATFIELD, DEPUTY

ISP DR#:B12001578
Citation #: ISP0136310
PROBABLE CAUSE AFFIDAVIT

BROOKS, Matthew O
Defendant.

) CR12-12437

DOB: [REDACTED]
SSN: [REDACTED]
OLN: [REDACTED]
STATE: Idaho

State of Idaho,)
) ss.
County of Canyon)

I, Trooper Blake Higley, the undersigned, being duly sworn of oath, deposes and says that:

1. I am a peace officer employed by the Idaho State Police.
2. The defendant was arrested on May 12, 2012 at 1350 hours ☐AM / ☒PM for the crime(s) of:

- I. Felony Possession of Methamphetamine- 37-2732C(3)(1)
- II. Possession of Drug Paraphernalia-37-2734A

3. Location of Occurrence: Eastbound Interstate 84@ approximately milepost 27.5, Canyon County, Idaho

4. Identified the defendant as: DIAZ, Roberto by:
- | | | |
|--|---|--|
| <input type="checkbox"/> Driver's License | <input checked="" type="checkbox"/> Verbal by Defendant | |
| <input type="checkbox"/> Military ID | <input type="checkbox"/> State ID Card | <input type="checkbox"/> Student ID Card |
| <input type="checkbox"/> Credit Cards | <input type="checkbox"/> Paperwork Found | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Witness _____ identified defendant. | | |

5. The crime(s) was committed in my presence. ☒Yes / ☐No
If no, information was supplied to me by: (witness)_____.

6. I believe there is probable cause to believe that the defendant committed such crime(s) because of the following facts:

CONTINUED ON NEXT PAGE

NOTE: You must include the source of all information that you provided below. Include both what you observed and what you learned from someone else (include name of that person).

PROBABLE CAUSE OF THE STOP AND ARREST:

On May 12, 2012 hours, at approximately 1632 hours, I, Trooper Blake Higley, stopped a blue Ford Thunderbird (Washington registration 706XJZ) on eastbound Interstate 84 at approximately milepost 27.5 in Canyon, County Idaho. I first observed this vehicle as it passed my location traveling 60 mph in a posted 75mph speed zone. As I approached the location of the vehicle, I observed it again traveling well below the posted speed limit of 65mph. I observed the vehicle traveling in the left lane, the vehicle signaled briefly, for less than two seconds and changed into the right lane. The lane change was abrupt and sudden. I approached the vehicle and spoke with the driver, later identified verbally as Matthew O BROOKS (DOB [REDACTED]). I immediately saw a pack of cigarettes sitting on the front passenger seat with two cigarettes within it. Also contained within cigarette box was a small plastic bag which contained a crystal substance which I believed to be methamphetamine. I could also smell the odor of marijuana in the vehicle, and could plainly see a small metal cone, which I knew to be the top portion of a marijuana pipe sitting in the center console. I asked BROOKS about meth use, which he denied. BROOKS later admitted to using methamphetamine two months ago. I reached in the vehicle and retrieved the cigarette box containing what I believed to be methamphetamine. BROOKS attempted to stop me from retrieving the box. I placed the cigarette box on the roof of the vehicle, and told BROOKS to exit the vehicle. I placed BROOKS in handcuffs and instructed him he was being detained. BROOKS was non-compliant and it took several minutes to get his name. While searching the interior of the vehicle, a marijuana pipe was found behind the driver's seat. I also located a blue zipper pouch in the top zipper compartment of the suitcase. Within the pouch, I located two injection needles, a spoon, rubber band, and baggies. I tested the crystal substance using a Narcotics Identification Kit (NIK). The test resulted in a presumptive positive for methamphetamine. The total gram weight was .4grams.

Dated: 05/13/2012

Affiant: [Signature]

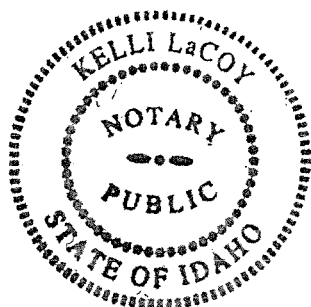
Subscribed and sworn before me on this 13 day of MAY 2012.

Person Authorized to Administer Oath

(or) Kelli LaCo
Notary Public of Idaho

Title: Sgt RCO

Residing at: Rees Idaho State Police Meridian
My Commission Expires: 3/28/2018



000008

SZ

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

FILED
A.M. 12:51 P.M.

MAY 14 2012

CANYON COUNTY CLERK
S HILL, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

MATTHEW O BROOKS
D.O.B. [REDACTED]

Defendant.

CASE NO. CR2012-

12437-C

CRIMINAL COMPLAINT

**POSSESSION OF CONTROLLED
SUBSTANCE**

Felony, I.C.37-2732(c)(1)

STATE OF IDAHO)

ss

County of Canyon)

PERSONALLY APPEARED Before me this 14 day of May, 2012,

Kimberlee S. Brath, of the Canyon County Prosecuting Attorney's Office, who

being duly sworn, complains and says:

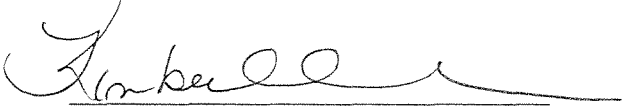
COMPLAINT

1
000009

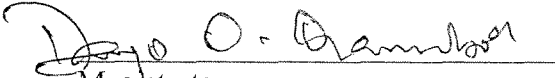
ORIGINAL

That the Defendant, Matthew O Brooks, on or about the 12th day of May, 2012,
in the County of Canyon, State of Idaho, did unlawfully possess a controlled substance, to-wit:
Methamphetamine, a Schedule II controlled substance.

All of which is contrary to **Idaho Code**, Section 37-2732(c)(1) and against the
power, peace and dignity of the State of Idaho.


Complainant

SUBSCRIBED AND SWORN To before me this 19th day of May, 2012.


Magistrate

THIRD JUDICIAL DISTRICT, STATE OF IDAHO
COUNTY OF CANYON

☒ ARRAIGNMENT ☒ IN-CUSTODY

STATE OF IDAHO,

Plaintiff

-vs-

MATTHEW O. BROOKS,

Defendant.

☐ True Name

Corrected Name:

) Case No. CR2012-12437*C/CR2012-12215*C

) Date: MAY 14, 2012

) Judge: ONANUBOSI

) Recording: MAG7 (316 - 319)

APPEARANCES:

☒ Defendant

☐ Defendant's Attorney ☐

☒ Prosecutor Mr. Matt Thompson

☐ Interpreter

ADVISEMENT OF RIGHTS: Defendant

☒ was informed of the charges against him/her and all legal rights, including the right to be represented by counsel.

☒ requested court appointed counsel.

☐ waived right to counsel.

☒ Indigency hearing held.

☒ Court appointed public defender.

☐ Court denied court-appointed counsel.
before Judge

☐ Arraignment continued to

☐ to consult / retain counsel,

☐ other

PRELIMINARY HEARING:

☒ Preliminary Hearing set

☐ District Court Arraignment:

Statutory time waived: ☐ Yes ☒ No

May 24, 2012 at 8:30 a.m.

☐ Preliminary Hearing Waived

before Judge Frates

before Judge

BAIL: State recommends

☐ Released on written citation promise to appear

☐ Released on own recognizance (O.R.)

☐ Released to pre-trial release officer.

☐ No Contact Order ☐ entered ☐ continued

☐ Address Verified

☐ Released on bond previously posted.

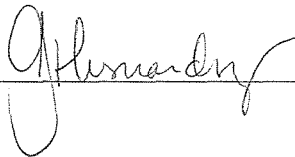
☒ Remanded to the custody of the sheriff.

☒ Bail set at \$25,000.00/total

☒ Consolidated with CR2012-12215*C

☐ Corrected Address _____

OTHER: _____

 _____, Deputy Clerk

THIRD JUDICIAL DISTRICT
STATE OF IDAHO
COUNTY OF CANYON

FILED 05/14/12 AT 3:19 p.M.
CLERK OF THE DISTRICT COURT
BY [Signature], Deputy

THE STATE OF IDAHO/or

Matthew O. Brooks

Case No. CR2012-124374C

ORDER APPOINTING PUBLIC
DEFENDER

The Court being fully advised as to the application of the above-named applicant and it appearing to be a proper case,

IT IS HEREBY ORDERED that the Canyon County Public Defender be, and hereby is, appointed for

☒ THE MATTER IS SET FOR Preliminary Hearing
05/24/12 @ 9:30 before Judge Frazier

☐ THE MATTER SHALL BE SET FOR _____

before Judge _____

Dated: 05/14/12

Signed: [Signature]

Judge

☒ In Custody -- Bond \$ 25,000.00 total
☐ Released: ☐ O.R.
☐ on bond previously posted
☐ to PreTrial Release

Juvenile: ☐ In Custody
☐ Released to _____

☐ No Contact Order entered.

☐ Cases consolidated.

☒ Discovery provided by State.

☐ Interpreter required.

☐ Additional charge of FTA.

Original--Court File

Yellow--Public Defender

Pink--Prosecuting Attorney

ORDER APPOINTING PUBLIC
DEFENDER

000012

2/06

THIRD JUDICIAL DISTRICT
STATE OF IDAHO
COUNTY OF CANYON

FILED 05/14/12 AT 3:19 P.M.
CLERK OF THE DISTRICT COURT
BY J. Hernandez, DEPUTY

STATE OF IDAHO,
Plaintiff,

-vs-

Matthew O. Brock
Defendant,

Case No. CR2012-12437-XC
CR2012-12215-XC

ORDER FOR

- ☐ Conditional Release/Pretrial Services
☐ Release on Own Recognizance
☒ Commitment on Bond

IT IS HEREBY ORDERED the defendant abide by the following conditions of release:

☐ Defendant is Ordered released

☐ On own recognizance

☐ Placed on probation

☐ Case Dismissed

☒ Bond having been set in the sum of \$ 25,000.00 ☒ Total Bond

☐ Bond having been ☐ increased ☐ reduced to the sum of \$ _____ ☐ Total Bond

☐ Upon posting bond, defendant must report to the Canyon County Pretrial Services office as stated below:

☐ Defendant shall report to the Canyon County Pretrial Services Office and follow the standard reporting conditions:

☐ Comply with a curfew designated by the Court or standard curfew set by Pretrial Services _____.

☐ Not consume or possess alcoholic beverages or mood altering substances without a valid prescription.

☐ Submit to evidentiary testing for alcohol and/or drugs as requested by Pretrial Services at defendant's expense.

☐ Not operate or be in the driver's position of any motor vehicle.

☐ Abide by any No Contact Order and its conditions.

☐ Submit to ☐ GPS ☐ Alcohol monitoring as directed by Pretrial Services.

Defendants Ordered to submit to GPS or alcohol monitoring shall make arrangements with a provider approved by Pretrial Services, prior to release.

OTHER: _____

Failure by defendant to comply with the rules and/or reporting conditions and/or requirements of release as Ordered by the Court may result in the revocation of release and return to the custody of the Sheriff.

Dated: 05/14/12 Signed: [Signature]
Judge

☒ White - Court

☒ Yellow - Jail/Pretrial Services

☒ Pink - Defendant

10/11

000013

THIRD JUDICIAL DISTRICT, STATE OF IDAHO
COUNTY OF CANYON
PRELIMINARY HEARING

STATE OF IDAHO	) Plaintiff	Case No. CR12-12437C, CR12-12215C
-vs-		Date: May 24, 2012
Matthew O. Brooks	) Defendant.	Judge: Hay
<input type="checkbox"/> True Name Corrected Name:		Recording: Mag 6 (854-854)

APPEARANCES:

<input checked="" type="checkbox"/> Defendant	<input checked="" type="checkbox"/> Defendant's Attorney - Scott James
<input checked="" type="checkbox"/> Prosecutor - Will Fletcher	<input type="checkbox"/> Interpreter

FAILURE TO APPEAR: Defendant failed to appear. It is Ordered

☐ bench warrant issued--bail \$ _____ ☐ bond forfeited.
☐ Other _____.

PROCEEDINGS:

☒ Preliminary hearing waived; Defendant bound over to District Court.
☐ Preliminary hearing held.
☐ Preliminary hearing continued to _____ at _____ m. before Judge _____.
☐ State moved to dismiss on the grounds: _____.
☐ Court dismissed Complaint.
☐ Prospective witnesses excluded.
☒ State's recommendations: Offer not stated but was noted it would remain open until Pre-Trial Conference.

STATE'S WITNESSES SWORN:

1. _____	2. _____
3. _____	4. _____
	5. _____

DEFENDANT'S WITNESSES SWORN:

1. _____	2. _____
3. _____	4. _____
	5. _____

☐ Defendant had no testimony or evidence to present.

EXHIBITS: ☐ As set forth on attached list.

COURT'S RULING:

☐ No probable cause; Complaint dismissed; Defendant discharged.
☐ Bond exonerated. ☐ Probable cause found for offense set forth in Complaint.
☐ Charges amended to: _____.
☐ Probable cause found for amended charge.
☒ Defendant held to answer to the District Court. District Court Arraignment set for **6/1/12** at **9:00** a.m. before Judge **Huskey**.
☒ Misdemeanor case(s) continued consolidated with felony case for further proceedings.
☐ Motion for bond reduction continued until the time of District Court Arraignment.

BAIL: The Defendant was

<input type="checkbox"/> Released on own recognizance (O.R.).	<input type="checkbox"/> Released to pre-trial release officer.
<input type="checkbox"/> Remanded to custody of the sheriff.	<input checked="" type="checkbox"/> Released on bond previously posted.
<input type="checkbox"/> Bail set \$ _____.	

OTHER: Mr. James advised the Court of the defendant's intent to hire private counsel.

K. Beckley, Deputy Clerk

Third Judicial District Court State of Idaho
In and For the County of Canyon
1115 Albany Street
Caldwell, Idaho 83605

Filed: 5/24/12 at 857 a.m.

Clerk of the District Court

By K. Beckley, Deputy

STATE OF IDAHO
Plaintiff,

vs.

Matthew O. Brooks
Defendant,

Case No: CR12-12437C

ORDER BINDING DEFENDANT OVER TO
DISTRICT COURT

Preliminary hearing having been ☒ waived ☐ held in this case on the 24th day of
May, 2012 and the Court being fully satisfied that a public offense has been
committed and that there is probable or sufficient cause to believe the Defendant guilty thereof,

IT IS HEREBY ORDERED that the Defendant herein be held to answer in the District Court of the Third
Judicial District of The State of Idaho, in and for the County of Canyon, to the charge of Possession of
Controlled Substance 37-2732(c)(1)

a felony, committed in Canyon County, Idaho on or about the 12th day of May,
2012.

IT IS FURTHER ORDERED that the Defendant herein shall be arraigned before the District Court of
the Third Judicial District of the State of Idaho, in and for the County of Canyon, on the 1st day of
June, 2012 at 9:00 a.m.

☒ Defendant is continued released on the bond posted.

☐ Defendant's personal recognizance release is ☐ continued ☐ ordered.

☐ Defendant's release to Pre-Trial Release Officer is ☐ continued ☐ ordered.

☐ YOU, THE SHERIFF OF CANYON COUNTY, IDAHO, are commanded to receive into your
custody and detain the Defendant until legally discharged. Defendant is to be admitted to bail in
the sum of \$ _____.

Dated: 5/24/2012

Signed Charles Ziegler
Magistrate

dm

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

FILED
A.M. *E/D* B.M.
MAY 24 2012
CANYON COUNTY CLERK
C ATKINSON, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

MATTHEW O BROOKS
D.O.B. [REDACTED]

Defendant.

CASE NO. CR2012-12437

INFORMATION

**POSSESSION OF CONTROLLED
SUBSTANCE**

Felony, I.C.37-2732(c)(1)

BRYAN F. TAYLOR, Prosecuting Attorney in and for the County of Canyon,
State of Idaho, who in the name and by authority of said state prosecutes in its behalf, in proper
person comes into the above entitled Court and informs said Court that the above name
Defendant stands accused by this Information of crime of

POSSESSION OF CONTROLLED SUBSTANCE
Felony
Idaho Code Section 37-2732(c)(1)

INFORMATION

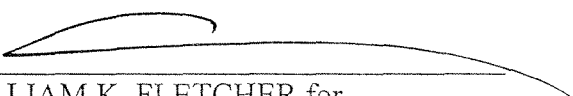
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committed as follows:

That the Defendant, Matthew O Brooks, on or about the 12th day of May, 2012, in the County of Canyon, State of Idaho, did unlawfully possess a controlled substance, to-wit: Methamphetamine, a Schedule II controlled substance.

All of which is contrary to **Idaho Code**, Section 37-2732(c)(1) and against the power, peace and dignity of the State of Idaho.

DATED this 27 day of May, 2012.


WILLIAM K. FLETCHER for
BRYAN F. TAYLOR
Prosecuting Attorney for Canyon County, Idaho

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **GREGORY M. CULET** DATE: **JUNE 1, 2012**

THE STATE OF IDAHO,	)	COURT MINUTES
)	
Plaintiff,	)	CASE NO: CR-2012-12437*C
	)	CR-2012-12215*C
)	
vs.	)	TIME: 9:00 A.M.
)	
MATTHEW O. BROOKS,	)	REPORTED BY: Laura Whiting
)	
Defendant.	)	DCRT5 1101-1107
_____)	

This having been the time heretofore set for **District Court Arraignment** in the above entitled matter, the State was represented by Mr. Gearld Wolff, Deputy Prosecuting Attorney for Canyon County; and the defendant appeared in court and was represented by counsel, Mr. Randall Grove.

The Court determined the defendant's true name was charged and advised the defendant that an Information had been filed in case number CR-2012-12437*C charging him with the felony offense of **Possession of a Controlled Substance**, which carried a maximum possible penalty of seven (7) years imprisonment and a \$15,000.00 fine. Further, the Court advised the defendant in case number CR-2012-12215*C, a uniformed citation had been filed charging him with traffic infractions of Failure to Signal

which carried a penalty of \$85.00, Failure to Display Registration, which carried a penalty of \$96.00, Failure to Provide Proof of Liability Insurance-1st offense, which carried a penalty of \$126.50; and with the misdemeanor offense of Possession of Drug Paraphernalia, which carried a maximum possible penalty of one (1) year in jail and a \$1,000.00.

The Court addressed counsel regarding procedural issues as to the infraction matters being consolidated with a felony case.

The Court advised the defendant that the sentences could run concurrent. Further, there would be court costs, restitution; and additionally, if he were not a citizen of the United States and was convicted there could be immigration consequences, including deportation, denial of residency status and denial of application for United States citizenship.

In answer to the Court's inquiry, Mr. Grove indicated the defendant had reviewed a copy of the Information and would waive formal reading of the same.

The Court determined the defendant understood the nature of the charges and the maximum penalties.

In answer to the Court's inquiry, Mr. Grove indicated **the defendant would enter a plea of not guilty to all charges and demand speedy trial.**

The Court set the non-infraction charges for a pretrial conference on August 27, 2012 at 1:30 p.m. before Judge Ryan and a three (3) day jury trial to commence September 25, 2012 at 9:00 a.m. before Senior Judge Morfitt.

The Court recommended the infraction matters be dealt with separately.

Mr. Grove expressed opinions.

The Court noted the matters would remain consolidated at this time and the assigned Court could subsequently address the issue.

The Court instructed the defendant to stay in contact with his attorney.

The defendant was continued released on the bond previously posted.

Deputy Clerk

CT

MARK J. MIMURA
CANYON COUNTY PUBLIC DEFENDER

LARY G. Sisson
510 Arthur Street
Caldwell, Idaho 83605
Telephone: (208) 639-4610
Facsimile: (208) 639-4611
Idaho State Bar No. 6072

Attorneys for Defendant

FILED
JUN 29 2012
CANYON COUNTY CLERK
C ATKINSON, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff,

vs.

MATTHEW O. BROOKS,

Defendant.

Case No. CR-2012-12437-C
CR-2012-12215-C ✓

MOTION TO SUPPRESS

COMES NOW Defendant, by and through his attorney of record, the Canyon County Public Defender's Office, and hereby moves this Honorable Court for an order suppressing all physical evidence, testimony, lab reports, photos, documents, any other type of evidence, and statements made by the defendant which were obtained by the State as a result of an unlawful seizure and search of the defendant and the defendant's vehicle.

In support of this Motion Defendant states the following facts, makes the following allegations, and requests the following potential evidence be suppressed.

STATEMENT OF RELEVANT FACTS

On May 12, 2012, at approximately 4:30 p.m. Trooper Blake Higley, stopped a blue Ford Thunderbird eastbound Interstate 84 in Canyon, County Idaho. The driver of the vehicle later identified himself as Matthew O. Brooks (DOB [REDACTED])

Trooper Blakely alleged pulled Mr. Brooks over because he was traveling well below the speed limit, namely 60 mph in a posted 75mph speed zone.

However, at that time there was an automobile accident in the right hand lane of Interstate 84 at that location. Consequently, Mr. Brooks as well as other vehicles were slowing down because of the accident and moving into the left hand lane.

As Trooper Blakely observed the vehicle traveling in the left lane, Trooper Blakely believed that the vehicle signaled briefly, for less than two seconds and changed into the right lane. The lane change was abrupt and sudden. The reason for the abrupt lane change was that Mr. Brooks had just safely cleared the accident and needed to exit the freeway at Exit 28. Mr. Brooks was traveling at approximately 55 miles per hour just before and as he was changing lanes.

Upon making his initial contact with Mr. Brooks, Trooper Blakely claims to have seen saw a pack of cigarettes sitting on the front passenger seat with two cigarettes within it. He also claims the pack of cigarettes contained a small plastic bag which contained a crystal substance which he believed to be methamphetamine. In his Affidavit of Probable Cause, Trooper Blakely does not explain how he could see a small plastic bag within the cigarette pack nor how he knew it contained methamphetamine. Trooper Blakely also claims that he could also smell the odor of marijuana in the vehicle, and could plainly see a small metal cone, which he believed to be the top portion of a

marijuana pipe sitting in the center console. Trooper Blakely asked Mr. Brooks about methamphetamine use, which he denied. Trooper Blakely claims Brooks later admitted to using methamphetamine two months ago. Trooper Blakely reached in the vehicle and retrieved the cigarette box containing what he believed to be methamphetamine.

Trooper Blakely told Mr. Brooks to exit the vehicle. He placed Mr. Brooks in handcuffs and instructed him he was being detained. While searching the interior of the vehicle, Trooper Blakely claims to have found a marijuana pipe behind the driver's seat. He also claims to have located a blue zipper pouch in the top zipper compartment of a suitcase. Within the pouch, he located two injection needles, a spoon, rubber band, and baggies. Trooper Blakely tested the crystal substance using a Narcotics Identification Kit (NIK.). The test resulted in a presumptive positive for methamphetamine. According to Trooper Blakely, the total gram weight was .4grams.

Mr. Brooks is currently charged with felony possession of methamphetamine and possession of drug paraphernalia with the intent to use it.

ALLEGATIONS

Defendant alleges the following:

1. He was unlawfully seized when Trooper Blakely pulled his vehicle over as it was exiting Interstate 84.
2. Because of that unlawful seizure, Trooper Blakely did not have a right to search Defendant's vehicle and it was thus an illegal search.
3. Even if Trooper Blakely's seizure of Defendant was lawful, there was not enough probable cause to justify a search of Defendant's vehicle without a valid search warrant.

4. Because he was unlawfully seized, and his vehicle unlawfully searched, any statements made by Mr. Brooks should be suppressed because they were obtained unlawfully.
5. Because he was unlawfully seized, and his vehicle unlawfully searched, any items that could be considered either illegal or inculpatory should be suppressed because they were obtained unlawfully.

POTENTIAL EVIDENCE TO BE SUPPRESSED

Defendant has not received discovery materials such as police reports, evidence lists, audio and/or video recordings, etc. Nevertheless, Defendant requests that the following items be suppressed. This includes, but is not necessarily limited to:

1. A pack of cigarettes
2. A small baggy purportedly containing methamphetamine
3. A small metal cone
4. A marijuana pipe
5. A blue zipper pouch A digital scale
6. Two injection needles
7. A spoon,
8. A rubber band
9. Baggies
10. The results of all lab testing

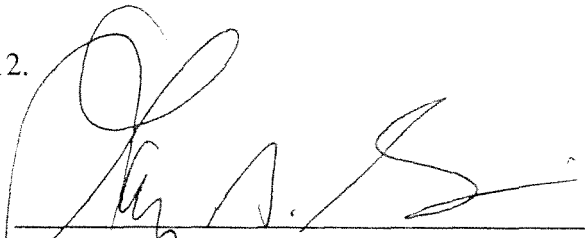
Defendant also requests that any photographs, lab testing results, audio recordings, video recordings, and statements made by Defendant in connection with these matters be suppressed.

CONCLUSION

In support of this motion, Defendant will file an affidavit stating why he believes he was unlawfully seized and searched. Defendant reserves the right to supplement this Motion with a Brief and other evidence and requests a hearing and oral argument on the matter.

000024

DATED this 29th day of June, 2012.

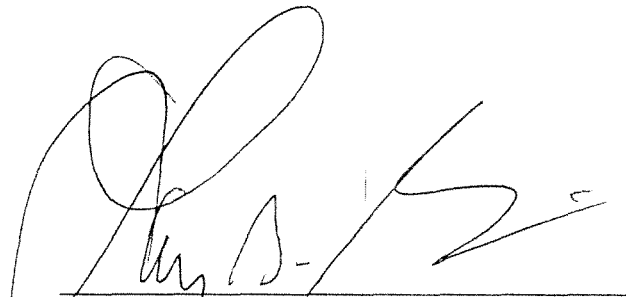

LARRY G. SISSON
Assistant Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of June, 2012, I served a true and correct copy of the within and foregoing document upon the individual(s) named below in the manner noted:

☒ By delivering copies of the same to the courthouse box of the attorney(s) indicated below.

Canyon County Prosecutor's Office
1115 Albany Street
Caldwell, Idaho 83605


LARRY G. SISSON
Assistant Public Defender

000025

CT

MARK J. MIMURA
CANYON COUNTY PUBLIC DEFENDER

LARY G. SISSON
510 Arthur St.
Caldwell, ID 83605
Telephone: (208) 639-4610
Facsimile: (208) 639-4611
Idaho State Bar No. 6072

Attorneys for Defendant

FILED
A.M. 8:50 P.M.

JUN 29 2012

CANYON COUNTY CLERK

C. Atkinson

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff,

vs.

MATTHEW O. BROOKS,

Defendant.

CASE NO.: CR-2012-12437-C
CR-2012-12215-C

MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO
SUPPRESS

TO: THE HONORABLE COURT AND THE CANYON COUNTY PROSECUTING
ATTORNEY

COMES NOW Defendant, by and through his attorneys of record, the Canyon
County Public Defender's Office, and hereby provides his Memorandum of Law in
Support of Defendant's Motion to Suppress.

STATEMENT OF RELEVANT FACTS

On May 12, 2012, at approximately 4:30 p.m. Trooper Blake Higley, stopped
a blue Ford Thunderbird eastbound Interstate 84 in Canyon, County Idaho. The

driver of the vehicle later identified himself as Matthew O. Brooks (DOB

[REDACTED] Trooper Blakely alleged pulled Mr. Brooks over because he was traveling well below the speed limit, namely 60 mph in a posted 75mph speed zone.

However, at that time there was an automobile accident in the right hand lane of Interstate 84 at that location. Consequently, Mr. Brooks as well as other vehicles were slowing down because of the accident and moving into the left hand lane.

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marijuana pipe sitting in the center console. Trooper Blakely asked Mr. Brooks about methamphetamine use, which he denied. Trooper Blakely claims Brooks later admitted to using methamphetamine two months ago. Trooper Blakely reached in the vehicle and retrieved the cigarette box containing what he believed to be methamphetamine.

Trooper Blakely told Mr. Brooks to exit the vehicle. He placed Mr. Brooks in handcuffs and instructed him he was being detained. While searching the interior of the vehicle, Trooper Blakely claims to have found a marijuana pipe behind the driver's seat. He also claims to have located a blue zipper pouch in the top zipper compartment of a suitcase. Within the pouch, he located two injection needles, a spoon, rubber band, and baggies. Trooper Blakely tested the crystal substance using a Narcotics Identification Kit (NIK.). The test resulted in a presumptive positive for methamphetamine. According to Trooper Blakely, the total gram weight was .4grams.

Mr. Brooks is currently charged with felony possession of methamphetamine and possession of drug paraphernalia with the intent to use it.

APPLICABLE LAW

Idaho State Law

Idaho Code, Section 49-654 states: "Basic rule and maximum speed limits. (1) No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve,

when approaching a hillcrest, when traveling upon any narrow or winding highway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.”

Idaho Code, Section 49-655 states: “Minimum speed regulation. No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with the law.”

Idaho Code, Section 49-808 states, in part: “Turning movements and required signals. (1) No person shall turn a vehicle onto a highway or move a vehicle right or left upon a highway or merge onto or exit from a highway unless and until the movement can be made with reasonable safety nor without giving an appropriate signal.

(2) A signal of intention to turn or move right or left when required shall be given continuously to warn other traffic. On controlled-access highways **and before turning from a parked position**, the signal shall be given continuously for not less than five (5) seconds and, *in all other instances, for not less than the last one hundred (100) feet traveled by the vehicle before turning* (emphasis added).”

Search and Seizure Law

Article 1, Section 17 of the Idaho Constitution states: “The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated . . .” unless a valid warrant is issued. The Fourth Amendment to the Constitution of the United States contains the identical language.

However, searches and seizures can be reasonable without a warrant under certain circumstances. A stop and investigatory detention is a recognized exception to the warrant

requirement. *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968). Whenever an officer stops an individual and restrains their freedom, even momentarily, that person is seized with the meaning of the Fourth Amendment, and therefore, the stop and detention must comply the constitution standards of reasonableness. *Id*; *Matter of Clayton*, 113 Idaho 817, 819, 748 P.2d 401 (1988); and *State v. Waldie*, 126 Idaho 864, 893 P.2d 811 (Ct. App. 1995).

Warrantless searches and seizures are considered unreasonable per se unless they come within one of the few specifically established and well-delineated exceptions to the warrant requirement. *California v. Acevedo*, 500 U.S. 565, 580 (1991); *State v. Henderson*, 114 Idaho 293, 295, 756 P.2d 1057, 1059 (1988); *Metzger*, 144 Idaho at 399, 162 P.3d at 778.

An officer may conduct a warrantless search of an automobile, including any containers, packages or compartments located inside the automobile which are capable of concealing the object of the search, under the following circumstances:

- (1) the officer has probable cause to believe that the automobile contains contraband or evidence of a crime; and
- (2) the automobile is readily mobile.

Wyoming v. Houghton, 526 U.S. 295, 119 S.Ct. 1297 (1999); *United States v. Ross*, 456 U.S. 798, 102 S.Ct. 2157 (1982); *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280 (1925); *State v. Tucker*, 132 Idaho 841, 979 P.2d 1199 (1999); *State v. Gallegos*, 120 Idaho 894, 821 P.2d 949 (1991); *State v. Bottelson*, 102 Idaho 90, 625 P.2d 1093 (1981); and *State v. Braendle*, No. 24716 (Idaho Ct.App. No. 5 2/8/00).

Probable cause to believe an automobile contains contraband or evidence of a crime must be based on objective facts which would be sufficient to convince a magistrate to issue a warrant under similar circumstances. *See Ross*; *State v. Murphy*, 129 Idaho 861,

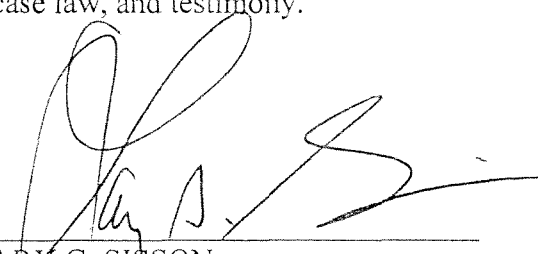
934 P.2d 34 (Ct.App. 1997); Ramirez; and *State v. Shepherd*, 118 Idaho 121, 795 P.2d 15 (Ct.App. 1990). In determining if probable cause exists a magistrate must consider the officer's training and experience. *Johnson v. United States*, 333 U.S. 10, 68 S.Ct. 367 (1948); *Murphy*; and *Ramirez*. In addition, the magistrate must evaluate the facts using a flexible common-sense approach based on the totality of the circumstances. See *Brinegar v. United States*, 338 U.S. 160, 69 S.Ct. 1302 (1949); and *Ramirez*. Therefore, the proper inquiry is whether a reasonable person in the officer's circumstances would believe that there was a fair probability that contraband or evidence was located in a particular place. See *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317 (1983); and *Shepherd*.

Evidence obtained by searches and seizures in violation of an individual's Fourth Amendment rights must be suppressed, as "fruit of the poisonous tree." *Weeks v. United States*, 232 U.S. 383, 34 S.Ct. 341 (1914); *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684 (1961); and *State v. Arregui*, 44 Idaho 43, 254 P. 788 (1927).

CONCLUSION

Based upon the aforementioned facts and legal precedents, Defendant respectfully requests the Court suppress all the evidence and statements obtained as a result of the searches and seizures that took place on May 12, 2012. Defendant reserves the right to supplement this brief with additional briefing, case law, and testimony.

DATED this 29th day of June, 2012.

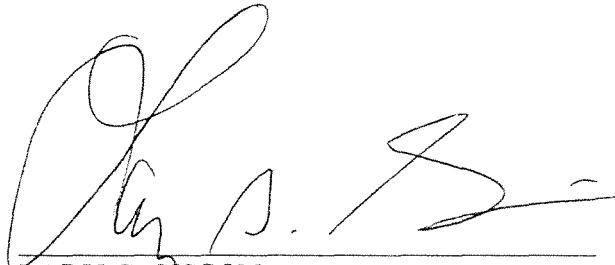


LARRY G. SISSON
Assistant Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of June, 2012, served a true and correct copy of the within and foregoing document upon the following: by placing copies of the same in the designated courthouse box of the office(s) indicated below.

Bryan F. Taylor
Canyon County Prosecuting Attorney
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605

A handwritten signature in black ink, appearing to read 'Larry G. Sjsson', written over a horizontal line.

LARRY G. SJSSON
Assistant Public Defender

THIRD JUDICIAL DISTRICT, STATE OF IDAHO
COUNTY OF CANYON
CONTINUED HEARING

STATE OF IDAHO

Plaintiff

-vs-

MATTHEW O. BROOKS.

Defendant.

☐ True Name
Corrected Name:

Case No. CR2012-12437-C
CR2012-12215-C

Date: July 23, 2012 / 2:00 p.m.

Judge: Thomas J. Ryan

Reported By: Kim Saunders

Recording: DCRT4 (240-241)

Hearing: motion to suppress

APPEARANCES:

☒ Defendant

☒ Prosecutor – Gearld Wolff

☒ Defendant's Attorney – Lary Sisson

☐ Interpreter -

☐ Other -

PROCEEDINGS: This matter shall be

☒ continued to the 16th day of August, 2012 at 1:30 p.m. before Judge Ryan.

☐ per stipulation of counsel ☐ at the request of ☐ State ☐ Defendant/Counsel

☐ to allow _____

BAIL: The Defendant was

☐ released on own recognizance (O.R.).

☐ remanded to custody of the sheriff.

☐ Bail set \$ _____

☐ released to pre-trial release officer.

☒ released on bond previously posted.

OTHER: _____.

, Deputy Clerk

jbt

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

FILED
A.M. 3:25 P.M.
AUG 14 2012

CANYON COUNTY CLERK
B HATFIELD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

MATTHEW O BROOKS,

Defendant.

CASE NO. CR2012-12437

**OBJECTION TO MOTION TO
SUPPRESS EVIDENCE**

COMES NOW, the State of Idaho, by and through its attorney, JOSHUA B. TAYLOR and does hereby object to the Defendant's Motion to Suppress.

I. Statement of Facts

On May 12, 2012 at 4:30 in the afternoon Trooper Blake Higley saw a blue Ford Thunderbird headed eastbound on Interstate 84 just west of Caldwell. Trooper Higley noticed the Thunderbird was traveling below the speed limit. Trooper Higley confirmed the speed by radar as 60 mph in a 75 mph zone – 15 mph below the limit. He saw the Thunderbird change lanes “abruptly” with a brief signal that lasted less than five seconds. Trooper Higley observed these actions between the Parma exit west of Caldwell to the middle Caldwell exit by the Pizza

OBJECTION TO MOTION TO
SUPPRESS EVIDENCE

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Hut. Trooper Higley followed the Thunderbird for almost two-and-a-half minutes before he pulled it over. During the two-and-a-half minutes it appears from the video that the Thunderbird continued to drive below the speed limit.

The defense brief stated Mr. Brooks slowed down with other cars to avoid a crash on the right shoulder of the freeway. The defense, at the time it filed the motion to suppress, did not have the advantage of Trooper Higley's in car video. The in car video does not show a wreck on the shoulder of the freeway at any time from the Parma exit all the way to the Pizza Hut exit.

Trooper Higley stopped Mr. Brooks for failing to signal for 5 seconds on a controlled access highway (See I.C. § 49-808). He approached the passenger side of the Thunderbird and helped Mr. Brooks roll down his window. Trooper Higley smelled the odor of marijuana in the Thunderbird, saw a small metal cone used to smoke marijuana in the center console, and saw two cigarettes and a baggie of methamphetamine sticking out of a cigarette box on the passenger seat. The defendant was the only passenger in the car. Trooper Higley asked Mr. Brooks when he last used methamphetamine. The defendant denied any methamphetamine use. Trooper Higley reached inside the car and grabbed the cigarette box containing the methamphetamine and asked, "Then what's this?" Mr. Brooks initially denied methamphetamine use and claimed the cigarette pack belonged to a hitchhiker he picked up. The defendant later admitted he used methamphetamine.

II. The Law and Analysis.

A. The seizure of the Thunderbird for a traffic stop.

Trooper Higley had a reasonable and articulable suspicion to stop the defendant based upon the totality of the circumstances.

A traffic stop by an officer constitutes a seizure of the vehicle's occupants and thus implicates the Fourth Amendment (as applied to the State's by the Fourteenth Amendment). *State v. Atkinson*, 128 Idaho 559, 561 (Ct. App. 1996), citing *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S.Ct. 1391, 1395-96, 59 L.Ed.2d 660 (1979); *State v. Emory*, 119 Idaho 661, 809 P.2d 522 (Ct.App.1991). The traffic stop must therefore be supported by a "reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws." *Id.* "The reasonableness of the suspicion *must be evaluated upon the totality of the circumstances* at the time of the stop [and] this reasonable suspicion standard requires less than probable cause, but more than speculation or instinct on the part of an officer." *Id.* citing *State v. Naccarato*, 126 Idaho 10, 12 (Ct. App. 1994) overruled on other grounds by *State v. Clark*, 135 Idaho 255 (2000) (emphasis added).

Thus we must determine whether, based on the "totality of the circumstances," Trooper Higley had a reasonable and articulable suspicion the Thunderbird was being driven contrary to traffic laws. Trooper Higley saw the defendant drive the Thunderbird 15 mph below the speed limit. The slow speed drew Trooper Higley's attention to the Thunderbird. He then saw the Thunderbird fail to signal for five seconds before changing lanes on a controlled access highway. *See* I.C. § 49-808.

In addition to the stop for failing to signal for more than five seconds and for an "abrupt" lane change, driving slowly can be a factor in an officer's decision to pull over a car. *See State v. Flowers*, 131 Idaho 205, 209 (Ct.App. 1998) (holding that, even though Flowers' car never left his lane entirely, his weaving pattern within the lane combined with his tires touching the center line twice and the fog line once, *in addition to his slow speed*, formed a reasonable and articulable reason for the stop); *see also, State v. Atkinson*, 128 Idaho 559, 561 (Ct.App. 1996)

(finding that a combination of factors, specifically when Atkinson's left tires crossed the center line and then touched the center line again two blocks later, provided a reasonable and articulable reason for the stop.).

The failure to signal for more than five seconds by itself gave Trooper Higley a "reasonable and articulable suspicion" for the stop, but the slow speed also contributed to the reason for the stop. The slow speed and the failure to signal for five seconds combined and formed a driving pattern which stood out to Trooper Higley. Based on the "totality of the circumstances" present to Trooper Higley at that moment he decided to stop the car. Trooper Higley conducted a lawful traffic stop because he had a "reasonable and articulable suspicion" for the stop: a failure to signal for more than five seconds, an abrupt lane change, and a speed 15 mph below the speed limit.

B. The Seizure of the Cigarette ack.

Trooper Higley was in a 1) lawful position to view the methamphetamine and 2) it was immediately apparent to Trooper Higley that the items viewed were contraband or evidence of a crime. *See State v. Buterbaugh*, 138 Idaho 96, 99 (Ct.App. 2002). Finally, Trooper Higley could reach inside the car to seize the methamphetamine under the automobile exception to the warrant requirement. *See State v. Buti*, 131 Idaho 793, (Ct.App. 1998).

Once Trooper Higley stopped the Thunderbird and approached the passenger side window, the plain view doctrine allowed Trooper Higley to reach inside the car and seize the cigarette pack. The "plain view doctrine" applies when two conditions are met: "1) there must be a lawful intrusion or the officer must otherwise properly be in position to view a particular area, and 2) it must be immediately apparent that items viewed are contraband or evidence of a crime." *State v. Buterbaugh*, 138 Idaho 96, 99 (Ct.App. 2002); citing *Horton v. California*, 496

U.S. 128, 135-36 (1990), *State v. Buti*, 131 Idaho 793, 799 (Ct.App. 1998); *State v. Hagedorn*, 129 Idaho 155, 158 (Ct.App. 1996). Trooper Higley was standing outside the passenger side door of the Thunderbird on the side of a highway open to the public. Therefore, Trooper Higley stood “properly in a position to view a particular area.” Trooper Higley could smell the odor of marijuana, see the metal cone of a marijuana pipe, and see two cigarettes and a baggie of what appeared to be meth sticking out of a cigarette pack. These items were “immediately apparent” to Trooper Higley as “contraband or evidence of a crime.” Because Trooper Higley stood in a lawful place and the contraband was immediately apparent, he could then seize the items so long as they were in a place where he had a lawful right to be, otherwise, he would have to obtain a search warrant. See *Buti* at 799, citing *Horton* at 137.

In this case, Trooper Higley did not have a lawful right to reach inside the car, but Idaho case law allows Trooper Higley to reach inside the car and seize the evidence under the “automobile exception” to the Fourth Amendment. *State v. Buti*, 131 Idaho 793 (1998). Officers in *Buti* were looking for a burglar wearing a blue sweatshirt. *Id.* at 795. After stopping a car with suspect’s inside who matched the description given by the victim, an officer spotted a blue sweatshirt inside the car. *Id.* The officer reached inside the car and grabbed it. *Id.*

The Idaho Supreme Court in *Buti* pointed out that the test for applying the “plain view” doctrine has yet another element: “the officer [must] have a ‘lawful right of access to the object itself.’” *Buti* at 799, citing *Horton* at 137. The court then went on to say that the officer did not have a lawful right of access to the sweatshirt because it was inside the suspect’s car. *Id.* at 800. However, *Buti* then allowed the sweatshirt to be seized under the fourth amendment exception to the warrant requirement under the “automobile exception.” *Id.* citing *Carroll v. United States*, 267 U.S. 132 (1925) (holding that the search of “a ship, motor boat, wagon, or automobile for

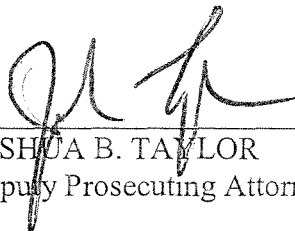
contraband goods” is different that the search of “a store, dwelling house, or other structure” because “a vehicle can be quickly moved”) at 153; and *State v. Gallegos*, 120 Idaho 894 (1991).

The facts under this case are the same. The trooper spotted methamphetamine and drug paraphernalia inside the defendant’s car. The trooper still had no legal right to access the car, but the automobile exception to the search warrant requirement allowed the trooper to reach inside the car and seize the evidence without first taking the time to obtain a warrant.

III. Conclusion

The State respectfully requests this court to uphold Trooper Higley’s stop and eventual seizure of the methamphetamine and marijuana pipe.

DATED this 14th day of August, 2012.



JOSHUA B. TAYLOR
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 14 day of August, 2012, I caused a true and correct copy of the foregoing instrument to be served upon the attorney for the defendant by the method indicated below and addressed to the following:

Canyon County Public Defender
Lary Sisson, esq.

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☒ Placed in Court Basket
- ☐ Overnight Mail
- ☐ Facsimile
- ☐ E-Mail


JOSHUA B. TAYLOR
Deputy Prosecuting Attorney

OBJECTION TO MOTION TO
SUPPRESS EVIDENCE

000039

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **THOMAS J. RYAN** DATE: **AUGUST 16, 2012**

THE STATE OF IDAHO,	)	COURT MINUTE
)	
Plaintiff,	)	CASE NO: CR2012-12437-C
	)	CR2012-12215-C
)	
vs.	)	TIME: 1:30 P.M.
)	
MATTHEW O. BROOKS,	)	DCRT4 (135-239)
)	
Defendant.	)	REPORTED BY: Kim Saunders
<hr/>		

This having been the time heretofore set for **motion hearing** in the above entitled matters, the State was represented by Mr. Josh Taylor, Deputy Prosecuting Attorney for Canyon County, Idaho; and the defendant was not present in court and represented by Mr. Lary Sisson.

The Court called the case and advised counsel the defendant had attempted to file documents pro se and provided the original to defense counsel and a copy to the State. The Court indicated it had not reviewed that motion in detail, however the Court believed the general thrust of the motions was that the Court lacked jurisdiction, that the State of Idaho was not an appropriate plaintiff, that the information in the complaint was defective, and several other allegations.

As there appeared to be challenges at every stage, the Court wanted it noted that the defendant was not present. It was the Court's understanding that Mr. Sisson had inquired of the Court's secretary whether the defendant could appear at this hearing via telephone. Mr. Sisson had been advised that the defendant was required to be present, although the defendant could waive his presence pursuant to Idaho Criminal Rule 43, which the Court reviewed for the record.

In answer to the Court's inquiry, Mr. Sisson indicated the defendant did not have transportation or funding to be here today. After discussing the issue with the defendant, the defendant chose to waive his presence. Mr. Sisson indicated he would be requesting a copy of the audio as well as a transcript for the defendant to review.

In answer to the Court's inquiry, Mr. Sisson indicated there was a recording of the stop and the parties were stipulating to its admission as well as stipulating to the court reporter not having to take a verbatim of that recording.

The defense's first witness, **BLAKE HIGLEY**, was called, sworn by the clerk and direct examined.

The video of the stop was published to the Court.

The witness was cross-examined, examined by the Court, and continued cross-examined.

The witness was excused.

The Court determined neither counsel had any further testimony to present.

Mr. Sisson presented argument in support of the motion.

The Court noted that nothing in the defense's motion raised the concerns expressed in Mr. Sisson's argument.

The Court indicated that based upon the evidence, the contraband was in plain view of the officer, which meant the plain view doctrine provided an exception to the warrant requirement. However, first the officer must be lawfully making the initial intrusion, which defense counsel was arguing against. There was no doubt in the Court's mind that once they were past that threshold question, the doctrine of plain view applied.

The issue of the language of 49-808(2) had not been raised in the briefing and the Court believed the State should have a fair opportunity to reply to that issue. The Court indicated it would allow the parties an additional fourteen (14) days to brief the issue of the language of 49-808(2) and would take the argument today under consideration.

Mr. Taylor advised the Court Mr. Sisson had sent him an e-mail regarding this issue, however, he would like the time to brief the issue.

In answer to the Court's inquiry, Mr. Sisson indicated he wanted to request a transcript and recording of this hearing.

The Court indicated it would be easy to provide the defendant with a recording of this hearing. However, the Court wished to proceed with the additional briefing and make a decision before making a decision as to whether a transcript should be made for purposes of an appeal.

In answer to Mr. Sisson's inquiry, the Court indicated he could submit an order to provide a recording of this hearing for free to the defendant.

Mr. Sisson requested the defendant be allowed to appear for the pre-trial telephonically.

The Court noted the fourteen (14) day time period was past the date of the pre-trial. **Therefore, the Court vacated the current pre-trial and re-set the pre-trial to the 18th day of September, 2012 at 1:30 p.m. before this Court.**

For the record, the Court admitted **State's exhibit #1**, the recording of the stop.



Deputy Clerk

CT

FILED
AUG 29 2012
CANYON COUNTY CLERK
B HATFIELD, DEPUTY

MARK J. MIMURA
CANYON COUNTY PUBLIC DEFENDER

LARY G. SISSON
510 Arthur St.
Caldwell, ID 83605
Telephone: (208) 639-4610
Facsimile: (208) 639-4611
Idaho State Bar No. 6072

Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff,

vs.

MATTHEW O. BROOKS,

Defendant.

CASE NO.: CR-2012-12437-C ✓
CR-2012-12215-C

**DEFENDANT'S SUPPLEMENTAL
BRIEF IN SUPPORT OF MOTION
TO SUPPRESS**

TO: THE HONORABLE COURT AND THE CANYON COUNTY PROSECUTING
ATTORNEY

COMES NOW Defendant, by and through his attorneys of record, the Canyon County
Public Defender's Office, and hereby provides his Supplemental Brief in Support of Defendant's
Motion to Suppress.

STATEMENT OF RELEVANT FACTS

On May 12, 2012, at approximately 4:30 p.m. Trooper Blake Higley, stopped a blue Ford
Thunderbird eastbound Interstate 84 in Canyon, County Idaho. The driver of the vehicle later

identified himself as Matthew O. Brooks (DOB [REDACTED]) Trooper Blakely alleged pulled Mr. Brooks over because Mr. Brooks failed to provide a continuous signal for at least five (5) seconds prior to making a lane change on Interstate Highway 84.

As Trooper Blakely observed the vehicle traveling in the left lane, Trooper Blakely believed that the vehicle signaled briefly, for less than two seconds and changed into the right lane. According to Trooper Blakely, the lane change was abrupt and sudden. Mr. Brooks was traveling at approximately 55 miles per hour just before and as he was changing lanes.

Upon making his initial contact with Mr. Brooks, Trooper Blakely claims to have seen saw a pack of cigarettes sitting on the front passenger seat with two cigarettes within it. He also claims the pack of cigarettes contained a small plastic bag which contained a crystal substance which he believed to be methamphetamine. In his Affidavit of Probable Cause, Trooper Blakely does not explain how he could see a small plastic bag within the cigarette pack nor how he knew it contained methamphetamine. However, at a hearing on the Motion to Suppress, Trooper Blakely clarified that he was approximately 2 feet away from the pack of cigarettes, and that the plastic baggie and its crystal substance were plainly in his view inside the open package of cigarettes.

Trooper Blakely also claims that he could also smell the odor of marijuana in the vehicle, and could plainly see a small metal cone, which he believed to be the top portion of a marijuana pipe sitting in the center console. Trooper Blakely asked Mr. Brooks about methamphetamine use, which he denied. Trooper Blakely claims Brooks later admitted to using methamphetamine two months ago. Trooper Blakely reached in the vehicle and retrieved the cigarette box containing what he believed to be methamphetamine.

Trooper Blakely told Mr. Brooks to exit the vehicle. He placed Mr. Brooks in handcuffs and instructed him he was being detained. While searching the interior of the vehicle, Trooper Blakely claims to have found a marijuana pipe behind the driver's seat. He also claims to have located a blue zipper pouch in the top zipper compartment of a suitcase. Within the pouch, he located two injection needles, a spoon, rubber band, and baggies. Trooper Blakely tested the crystal substance using a Narcotics Identification Kit (NIK.). The test resulted in a presumptive positive for methamphetamine. According to Trooper Blakely, the total gram weight was .4grams.

Mr. Brooks was charged with felony possession of methamphetamine and possession of drug paraphernalia with the intent to use it. On June 29, 2012, Defendant's attorney filed a timely Motion to Suppress. A hearing on the Motion to Suppress was held on August 16, 2012. Trooper Blakely testified at that hearing. In addition, by stipulation the parties admitted into evidence a video recording (also containing audio) from Trooper Higley's patrol vehicle showing Defendant's lane change, the stopping of the Defendant's vehicle, and Trooper Higley taking Mr. Brooks into custody prior to a search of Mr. Brooks' vehicle.

At the conclusion of the Motion to Suppress Hearing, the Court gave both parties an additional fourteen (14) days to supplement their legal positions with briefs.

APPLICABLE LAW

Idaho State Law

Idaho Code, Section 49-808 states, in part: "Turning movements and required signals. (1) No person shall turn a vehicle onto a highway or move a vehicle right or left upon a

highway or merge onto or exit from a highway unless and until the movement can be made with reasonable safety nor without giving an appropriate signal.

(2) A signal of intention to turn or move right or left when required shall be given continuously to warn other traffic. On controlled-access highways *and before turning from a parked position*, the signal shall be given continuously for not less than five (5) seconds and, *in all other instances, for not less than the last one hundred (100) feet traveled by the vehicle before turning* (emphasis added)."

Idaho Code, Section 73-102(1) states, in part: "The compiled laws establish the law of this state respecting the subjects to which they relate, and their provisions and all proceedings under them are to be liberally construed, with a view to effect their objects and to promote justice."

Idaho Code, Section 73-113 states, in part: "Words and phrases are construed according to the context and the approved usage of the language"

Search and Seizure Law

Article 1, Section 17 of the Idaho Constitution states: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated" unless a valid warrant is issued. The Fourth Amendment to the Constitution of the United States contains the identical language.

However, searches and seizures can be reasonable without a warrant under certain circumstances. A stop and investigatory detention is a recognized exception to the warrant requirement. *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968). Whenever an officer stops an individual and restrains their freedom, even momentarily, that person is seized with the meaning

of the Fourth Amendment, and therefore, the stop and detention must comply the constitution standards of reasonableness. *Id*; *Matter of Clayton*, 113 Idaho 817, 819, 748 P.2d 401 (1988); and *State v. Waldie*, 126 Idaho 864, 893 P.2d 811 (Ct. App. 1995).

Warrantless searches and seizures are considered unreasonable per se unless they come within one of the few specifically established and well-delineated exceptions to the warrant requirement. *California v. Acevedo*, 500 U.S. 565, 580 (1991); *State v. Henderson*, 114 Idaho 293, 295, 756 P.2d 1057, 1059 (1988); *Metzger*, 144 Idaho at 399, 162 P.3d at 778.

An officer may conduct a warrantless search of an automobile, including any containers, packages or compartments located inside the automobile which are capable of concealing the object of the search, under the following circumstances:

- (1) the officer has probable cause to believe that the automobile contains contraband or evidence of a crime; and
- (2) the automobile is readily mobile.

Wyoming v. Houghton, 526 U.S. 295, 119 S.Ct. 1297 (1999); *United States v. Ross*, 456 U.S. 798, 102 S.Ct. 2157 (1982); *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280 (1925); *State v. Tucker*, 132 Idaho 841, 979 P.2d 1199 (1999); *State v. Gallegos*, 120 Idaho 894, 821 P.2d 949 (1991); *State v. Bottelson*, 102 Idaho 90, 625 P.2d 1093 (1981); and *State v. Braendle*, No. 24716 (Idaho Ct.App. No. 5 2/8/00).

Probable cause to believe an automobile contains contraband or evidence of a crime must be based on objective facts which would be sufficient to convince a magistrate to issue a warrant under similar circumstances. *See Ross*; *State v. Murphy*, 129 Idaho 861, 934 P.2d 34 (Ct.App. 1997); *Ramirez*; and *State v. Shepherd*, 118 Idaho 121, 795 P.2d 15 (Ct.App. 1990). In determining if probable cause exists a magistrate must consider the officer's training and

experience. *Johnson v. United States*, 333 U.S. 10, 68 S.Ct. 367 (1948); *Murphy*; and *Ramirez*.

In addition, the magistrate must evaluate the facts using a flexible common-sense approach based on the totality of the circumstances. See *Brinegar v. United States*, 338 U.S. 160, 69 S.Ct. 1302 (1949); and *Ramirez*. Therefore, the proper inquiry is whether a reasonable person in the officer's circumstances would believe that there was a fair probability that contraband or evidence was located in a particular place. See *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317 (1983); and *Shepherd*.

Evidence obtained by searches and seizures in violation of an individual's Fourth Amendment rights must be suppressed, as "fruit of the poisonous tree." *Weeks v. United States*, 232 U.S. 383, 34 S.Ct. 341 (1914); *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684 (1961); and *State v. Arregui*, 44 Idaho 43, 254 P. 788 (1927).

Idaho Case Law

A statute must be construed so that effect is given to every word and clause of a statute. *State v. Baer*, 132 Idaho 416, 417-18, 973 P.2d 768, 769-70 (Ct.App.1999). When interpreting the meaning of language contained in a statute, a court must interpret the statute in order to give effect to the legislature's intent and purpose. *State v. Coleman*, 128 Idaho 466, 469, 915 P.2d 28, 31 (Ct.App.1996). There is no occasion for construction of a statute where the language of a statute is plain and unambiguous. *State v. McCoy*, 128 Idaho 362, 365, 913 P.2d 578, 581 (1996). "The plain, obvious and rational meaning is always preferred to any hidden, narrow or irrational meaning." *State v. Arrasmith*, 132 Idaho 33, 40, 966 P.2d 33, 40 (Ct.App.1998).

LEGAL ARGUMENT

To begin, a review of Idaho case law shows that neither the Idaho Court of Appeals nor the Idaho Supreme Court has issued an opinion interpreting the proper length of time or distance required by Idaho Code, Section 49-808(2) for turning or moving a vehicle upon a highway.¹ Consequently, applicable case precedent does not exist.

Therefore, a review of the turn signal laws throughout the United States was undertaken to see if other jurisdictions have a law identical or similar to §49-808. If so, then the thought was perhaps their appellate courts had interpreted the meaning of their statutes which could then be applied in this instance. The search did not produce any applicable case precedents. However, it did yield not only interesting, but instructive, information about how other states require the use of turn signals before a driver changes lane on a highway.

Louisiana, Kansas, Oklahoma and Wyoming all have statutes that use the identical phrase contained in Idaho's statute which requires use of a signal for "... not less than the last one hundred (100) feet traveled by the vehicle before turning." Surrounding and other western states, such as Washington, Montana, Nevada, Oregon, Colorado, California and Texas, do not have the exact language of Idaho's statute but they do, at a minimum, require a signal to be used for at least 100 feet before a vehicle turns or moves left or right. However, Utah's applicable statute requires at least two (2) seconds of signaling before a proper lane change may be made.²

¹ *State v. Debrewe*, 133 Idaho 663, 991 P. 2d 388 (Idaho App. 1999) and *Burton v. State, Dept. of Transp.*, 149 Idaho 746, 240 P.3d 933 (Idaho App. 2010) both dealt with the issue of whether a signal was required in certain situations. The need for using a turn signal is not an issue in this case so the holdings in those two cases are not applicable to this matter.

² Utah Code, § 41-6a-804(1)(b)

On the other hand, no other state in the United States uses the phrase, “. . . before turning from a parked position, the signal shall be given continuously for not less than five (5) seconds . . .” with regards to turning or moving from a parked position. Other states, such as Pennsylvania, require a signal if a vehicle is moving from a parked position.³ But, no other state requires a driver to signal for a specific period of time before moving from a parked position.

Ultimately, the uniqueness of the portion of Idaho’s law regarding the turning from a parked position did not lead to any statutory interpretations from other jurisdictions which would assist the Court in this matter.

Therefore, the Court is left to interpret §49-808(2) without the assistance of other legal opinions. Hence, as cited above, the statute must be construed so that effect is given to every word and clause of a statute. *State v. Baer*. When interpreting the meaning of language contained in a statute, a court must interpret the statute in order to give effect to the legislature's intent and purpose. *State v. Coleman*. There is no occasion for construction of a statute where the language of a statute is plain and unambiguous. *State v. McCoy*. The plain, obvious and rational meaning is always preferred to any hidden, narrow or irrational meaning. *State v. Arrasmith*.

Subsection 1 of §49-808 should first be analyzed. This subsection states:

“No person shall turn a vehicle onto a highway or move a vehicle right or left upon a highway or merge onto or exit from a highway unless and until the movement can be made with reasonable safety nor without giving an appropriate signal.”

3 75 Pa.C.S., §3334

It seems plain and unambiguous from this subsection of the statute that two requirements must be met by drivers when they are moving or turning vehicles on to, off of, or within highways. Those two requirements are the movement must be made with reasonable safety and an appropriate signal must be made before the movement is initiated. Moreover, those two requirements are the guiding principles that must be considered in order to give effect to the legislature's intent and purpose.

The first sentence of Subsection 2 of §49-808 is instructive as to the legislature's intent and purpose in three ways. To begin, the sentence acknowledges that signal of intention should occur in three very distinct situations, namely: a) turning, b) moving right, and c) moving left. By using the conjunction “or” the legislature made it clear that in any one of these three scenarios a signal is necessary.

Second, the sentence also shows that the legislature also built flexibility into the statute. In other words, by adding the phrase “when required” right after “. . . turn or move right or left” the legislature contemplated that there may be a scenario when a signal may not be necessary before turning or moving right or left. A specific scenario was not identified because statutes – as well as society’s view of what is legal and not legal – change constantly. Therefore if there ever became a situation when signally was not necessary, §49-808 is prepared to deal with that situation without the need of it being amended.

Third, the first sentence commands (by using the word “shall”) that if a signal is required it must be given continuously to warn other traffic. To the chagrin of perhaps everyone involved in this matter, the statute does a poor job of defining the word “continuously”.

The next key phrase in the statute says, “On controlled-access highways and before turning from a parked position” For the purposes of this case, the defendant is not contesting – and in fact agrees – that Interstate 84 is a controlled-access highway. However, the controlled-access part of the phrase is linked with the phrase “turning from a parked position” with the conjunction “and”.

There are a number of different definitions for the word “and”. However, the plain, obvious and rational meaning is always preferred to any hidden, narrow or irrational meaning. *State v. Arrasmith*. In other words, “and” means and – which is to say it is being used as a function word to indicate a connection between two conditions. Consequently, when a vehicle is **both** on a controlled-access highway **and**, while on the controlled-access highway the vehicle desires to move from a parked position, before turning from that parked position then (and only then) must the signal be given continuously for not less than five (5) seconds. This interpretation is consistent with the mandate in Idaho Code, Section 73-113 which states, in part: “Words and phrases are construed according to the context and the approved usage of the language”

It is anticipated that the State will argue that “the five second rule” applies in two separate and distinct situations. One would be when a vehicle is turning, moving right or moving left on a controlled access highway. The second would be when a vehicle (regardless of what type of highway it is on) is turning from a parked position. However, this interpretation ignores the plain and unambiguous reading of the statute. In addition, it assumes that writers of the legislation and legislators themselves did not understand the difference between the meaning of the words “and” and “or”.

Put more simply, if the legislature wanted to the five second rule to apply to the aforementioned two scenarios, then they would have simply passed the statute so it would read, “. . . On controlled-access highways, or before turning from a parked position, the signal shall be given continuously for not less than five (5) seconds” In the alternative, the legislature could have written Subsection 2 so it would read:

A signal of intention to turn or move right or left when required shall be given continuously to warn other traffic. A signal shall be given continuously for not less than five (5) seconds when:
(a) on controlled-access highways, or (b) before turning from a parked position.
In all other instances, a signal shall be given continuously for not less than the last one hundred (100) feet traveled by the vehicle before turning.

However, that is not how the legislature chose how to write and pass this particular statute. In fact, it is arguable that they wrote this statute in its original form in order to avoid making it more complicated and to avoid repeating phrases such as “continuously for not less than.”

It should also be noted that the sentence immediately preceding the phrase in dispute, the legislature demonstrated its knowledge of the differences between the conjunctions “or” and “and” and how to use them properly. As previously explained, the legislature used the word “or” to make it clear that whether a vehicle was turning, moving right or moving left it had to signal to warn other traffic.

The last key phrase in Subsection 2 states: “. . . and, in all other instances, for not less than the last one hundred (100) feet traveled by the vehicle before turning.” It is anticipated that the State may argue that the use of “and” between “controlled-access highway” and “from a parked position” and proposed by the defense is incorrect because the word “and” followed by

“in all other instances” is not used as a connection between two conditions. Instead the second “and” is being used as a supplementary explanation of a different standard for a different situation. Therefore, the first “and” following “controlled-access highway” is also used to link a second situation (i.e. “from a parked position”) that is unrelated to “controlled-access highway” but also requiring a five second signal.

If the previous paragraph is confusing, then it adeptly illustrates that the potential argument found therein is not only confusing as well, but also implausible and improper. In other words, statutes are meant to be written so that they are easily understood. Consequently, explaining the meaning of a statute should also be easy. Any explanation of a statute that is not easily conveyed suggests that the explanation itself is not accurate.

In any event, the last phrase of, “. . . and, in all other instances, for not less than the last one hundred (100) feet traveled by the vehicle before turning” relates to the minimum amount of distance a vehicle must use a signal before turning, moving right or moving left except for the one situation where a vehicle is on a controlled-access highway and turning from a parked position. The word “and” used at the beginning of this last phrase and coupled with “in all other instances” is being used as a supplementary explanation to designate the standard for turn signal use in all other factual situations. It appears that the legislature was trying not to be too verbose by using the second “and” instead of more definitely delineating the standard for signaling in all scenarios.

Finally, let’s go back to how other states word their statutes in regards to using turn signals. It is no secret that legislative bodies often use the same language, or highly similar language, when writing legislation. Sometimes that is done because the template laws have

passed judicial scrutiny and thus become more difficult to legally challenge in other jurisdictions. Sometimes these laws are based on model laws researched and propagated by national groups with expertise as to the subject matter. In other situations, it is simply easier and quicker to use some other states' laws as basis for writing a law in another state.

Whatever the case may be, in regards to using turning signals the general standard in the western United States seems to be that a vehicle must signal for at least (100) feet before turning or moving right or left. A few states have added additional restrictions and one (Utah) has gone with a two second rule. However, for the most part these western states (including Idaho) have determined that 100 feet is sufficient to safely notify other driver's of a person's intent to move or turn.

The facts established at the Motion to Suppress Hearing show that Mr. Brooks was traveling at approximately 55 mph when he was using his turn signal and actually changing lanes on the highway. That means that he was traveling at approximately 80.66 feet per second. Officer Higley testified that Mr. Brooks signaled for less than 2 seconds. A signal for just over 1 second (precisely 1.25 seconds) would be enough to meet the 100 foot minimum requirement in §49-808(2).

It should also be noted that Idaho has carved out a unique exception to the "100 foot rule." Specifically, a vehicle must be on a controlled-access highway. Defendant argues that in addition to being on a controlled access highway, the vehicle must be turning from a parked position. It is certainly conceivable that a vehicle could be parked on a controlled access highway due to a vehicle malfunction, an accident, a road hazard, or even heavy, rush-hour traffic. A vehicle could be stopped in preparation for finding an opening in traffic so it could

merge from one controlled-access highway to another. In those types of scenarios, it would make sense that the legislature would require more time for signaling – especially when a vehicle is going from a parked position into traffic that could be going as fast as 75 miles per hour.

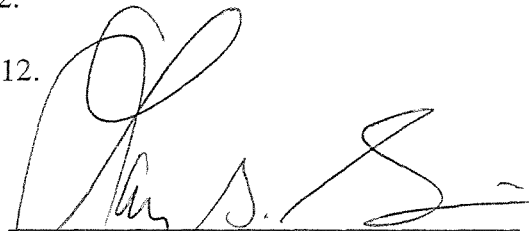
In brief summary, the plain and unambiguous reading of §49-808(2), together with the little tangential evidence available, does not support the conclusion that all lane changes on a controlled-access highway must be for a minimum of five (5) seconds. Instead, the proper interpretation of the statute is that all lane changes or turns, except in one specific instance, need only be preceded by a signal for “. . . not less than the last one hundred (100) feet traveled by the vehicle before turning.” The one exception to the “100 foot rule” would be if a vehicle is both on a controlled access highway and at the same time turning from a parked position. In that case then the “five second rule” would apply.

In this case, Trooper Higley misunderstood the law and erroneously stopped Mr. Brooks even though he had signaled at least 100 feet before changing lanes. Because the stop was unlawful, then any evidence obtained after the stop must be suppressed.

CONCLUSION

Based upon the aforementioned facts and legal precedents, Defendant respectfully requests the Court suppress all the evidence and statements obtained as a result of the searches and seizures that took place on May 12, 2012.

DATED this 29th day of August, 2012.

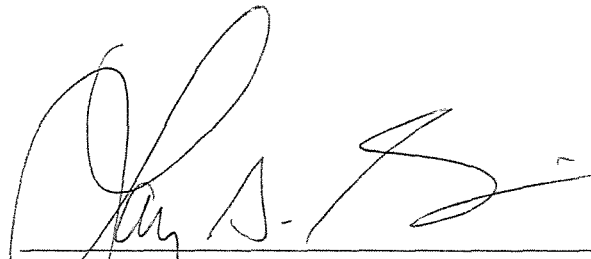


LARRY G. SISSON
Assistant Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of August, 2012 served a true and correct copy of the within and foregoing document upon the following: by placing copies of the same in the designated courthouse box of the office(s) indicated below.

Bryan F. Taylor
Canyon County Prosecuting Attorney
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605



LARRY G. SISSON
Assistant Public Defender

LARY G. SISSON
Mimura Law Offices, PLLC
510 Arthur St.
Caldwell, Idaho 83605
Telephone: (208) 639-4610
Facsimile: (208) 639-4611
Idaho State Bar No. 6072

Attorney for Defendant

FILED
A.M. P.M.

AUG 30 2012

CANYON COUNTY CLERK
B HATFIELD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CANYON
MAGISTRATE DIVISION

STATE OF IDAHO,

Plaintiff,

vs.

MATTHEW O. BROOKS,

Defendant.

CASE NOS. CR-2012-12437-C ✓
CR-2012-12215-C

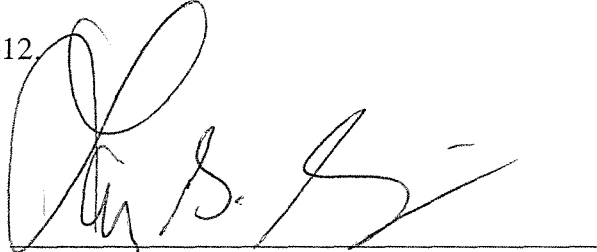
MOTION TO APPEAR
TELEPHONICALLY AT PRE-
TRIAL CONFERENCE

COMES NOW Defendant, Matthew O. Brooks, by and through his attorney of record,
and hereby moves this honorable Court for an Order to allow Defendant to appear by telephone
at the Pre-Trial Conference scheduled in these matter for the 18th day of September, 2012 at 1:30
p.m. This motion is made pursuant to Rule 43.1 of the Idaho Criminal Rules and is based on the
following:

1. Defendant lives in Hillsboro, Oregon;
2. Reasonably speaking, it would take Defendant anywhere from 7 to 9 hours to
drive to Caldwell, Idaho for the Pre-Trial Conference;

3. As a result of these criminal charges Defendant has lost his vehicle and Defendant has lost his job;
4. Defendant is still unemployed today and still does not own a vehicle;
5. Consequently, it would place an undue hardship upon Defendant to require him to personally appear for a hearing that will be relatively short;
6. Defendant has kept in contact with Pre-Trial Release Services and has not violated their rules and requirments; and
7. It is in the interest of judicial economy to grant this motion.

DATED this 30th day of August, 2012.

A handwritten signature in black ink, appearing to read 'Lary G. Sisson', written over a horizontal line.

Lary G. Sisson
Assistant Public Defender

CERTIFICATE OF SERVICE

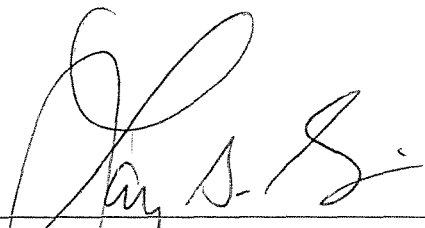
I hereby certify that, on the 30th day of August, 2012, I served a true and correct copy of the within and foregoing document upon the individual(s) named below in the manner noted:

- ☒ By depositing copies of the same in the designated courthouse box of the individual listed below.

Brian F. Taylor
Canyon County Prosecuting Attorney
1115 Albany Street,
Caldwell, ID 83605

- ☒ By depositing copies of the same in the United States Mail, postage prepaid, first class.

Matthew O. Brooks
603 N 1st Avenue
Hillsboro, OR 97123



LARRY G. SISSON
Assistant Public Defender

LARY G. SISSON
Mimura Law Offices, PLLC
510 Arthur St.
Caldwell, Idaho 83605
Telephone: (208) 639-4610
Facsimile: (208) 639-4611
Idaho State Bar No. 6072

FILED
A.M. / P.M.

AUG 31 2012

CANYON COUNTY CLERK
B. RAYNE, DEPUTY

Attorney for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CANYON
MAGISTRATE DIVISION

STATE OF IDAHO,

Plaintiff,

vs.

MATTHEW O. BROOKS,

Defendant.

CASE NOS. CR-2012-12437-C ✓
CR-2012-12215-C

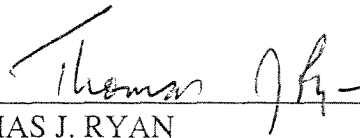
ORDER ALLOWING DEFENDANT
TO APPEAR TELEPHONICALLY
AT PRE-TRIAL CONFERENCE

THIS MATTER came before the Court upon Defendant's Motion to Appear ¹⁸ ₁₉ Telephonically at his Pre-Trial Conference which is scheduled for September 18, 2012 at 1:30 p.m. After review of the motion, and there being good cause;

THEREFORE IT IS ORDERED AND THIS DOES ORDER that Matthew O. Brooks may appear by telephone at the Pre-Trial Conference currently scheduled in these matters for the 18th day of September, 2012 at 3:00 p.m., or as soon thereafter as it may be heard.

IT IS FURTHER ORDERED that Mr. Brooks' attorney shall provide to the court prior to the hearing the appropriate telephone number by which Defendant shall participate in the hearing. The Court shall initiate the telephone call to Defendant.

DATED this 31st day of August, 2012.



THOMAS J. RYAN
District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on the 31 day of August, 2012, I served a true and correct copy of the within and foregoing document upon the following named below in the manner noted:

☒ By depositing copies of the same in the designated courthouse box of the individual(s) listed below.

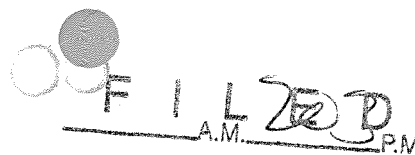
Brian F. Taylor
Canyon County Prosecuting Attorney
1115 Albany Street,
Caldwell, ID 83605

Mimura Law Offices, PLLC
510 Arthur Street
Caldwell, ID 83605

CHRIS YAMAMOTO
Clerk of the District Court

By: 

Deputy Clerk



jbt

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

CANYON COUNTY CLERK
S HILL, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

MATTHEW O BROOKS,

Defendant.

CASE NO. CR2012-12437

**OBJECTION TO MOTION TO
SUPPRESS EVIDENCE**

The State of Idaho, by and through its attorney, Joshua B. Taylor, objects to the Defendant's Motion to Suppress because I.C. § 49-808 is not unconstitutionally vague.

I. Legal Grounds

The State anticipates the defense will present two objections to the constitutionality of I.C. § 49-808.

1. Whether I.C. § 49-808 is unconstitutionally vague "on its face?"
2. Whether I.C. § 49-808 is unconstitutionally vague "as applied to a complainant's conduct?"

OBJECTION TO MOTION TO
SUPPRESS EVIDENCE

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II. Legal Background

This case asks whether I.C. § 49-808 can survive an analysis under the Due Process Clause of the Fourteenth Amendment. Due process requires that all “be informed as to what the State commands or forbids” and that “men [and women] of common intelligence” not be forced to guess at the meaning of the criminal law. *Burton v. State, Dept of Transp.*, 149 Idaho 746, 748 (Ct.App.2010); citing *Smith v. Goguen*, 415 U.S. 566, 574 (1974); *State v. Cobb*, 132 Idaho 195 (1998). This is commonly referred to as the “void-for-vagueness doctrine.” The void-for-vagueness doctrine requires that

- 1) A statute defining criminal conduct ... be worded with sufficient clarity and definiteness that ordinary people can understand what conduct is prohibited, and
- 2) The statute be worded in a manner that does not allow arbitrary and discriminatory enforcement. *Burton*, 149 Idaho at 746; citing *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 497-99 (1982); *State v. Korsen*, 138 Idaho 706, 711 (2003); *State v. Martin*, 148 Idaho 31, 34 (Ct.App.2009).

In order for the statute to be “worded with sufficient clarity” it must “give adequate notice to people of ordinary intelligence concerning the conduct it proscribes.” *Id.* In order for the statute to be worded in a manner that does not allow police officers to enforce it in an “arbitrary and discriminatory” way, the statute must “establish minimal guidelines to govern law enforcement...” *Burton*, 149 Idaho at 746; citing *Korsen*, 138 Idaho at 712; *Martin*, 148 Idaho at 35.

III. Applying the Law to the Facts.

In this case, Trooper Blake Higley saw the defendant drive his car eastbound on Interstate 84 near Caldwell, Idaho. Interstate 84 is a “controlled-access highway.” See I.C. § 49-109(5)(b)

(Any highway or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway except at such points only or in such manner as may be determined by the public authority...). Persons who drive cars and trucks down Interstate 84 may only exit and enter the freeway at specific points along the route. Traffic is divided into two lanes in each direction. A “barrow pit” separates each direction of traffic.

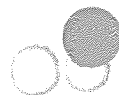
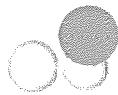
At about 2 p.m. on May 12, 2012, Trooper Blake Higley observed the defendant driving his car 60 mph in a 75 mph zone. Trooper Higley watched the defendant’s car and saw it change lanes from the left lane to the right lane without signaling for more than five seconds before making the lane change. Trooper Higley saw this as a violation of I.C. §49-808 and he stopped the defendant’s car. In Trooper Higley’s report he stated, “the vehicle signaled briefly [from the left lane], for less than two seconds and [then] changed into the right lane.” He added, “The lane change was abrupt and sudden.”

Trooper Higley stopped the defendant. When Trooper Higley arrived at the passenger side of the car, he smelled marijuana, he saw methamphetamine and a marijuana pipe, he reached into the car, seized the evidence, and arrested the defendant.

A. Idaho Code § 49-808 is “Worded with Sufficient Clarity and Definiteness that Ordinary People Can Understand What Conduct is Prohibited.”

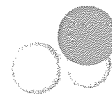
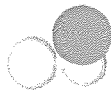
There are two separate attacks available to the defense under the Due Process Clause on a “void-for-vagueness” challenge. The first is that the statute is “vague on its face.” The second is that the statute is “vague as applied to the complainant’s conduct.” See *Burton*, 149 Idaho at 748.

1. The statute is not “void-for-vagueness” on its face because the defense cannot show that the statute is “impermissibly vague in all of its applications.”



In order to succeed on a challenge under a “void-for-vagueness” charge on the face of the statute, the court must find the statute is “impermissibly vague in all of its applications.” *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.* 455 U.S. 489 (1982). In order to interpret a statute, the court first begins “with an examination of its literal words.” *State v. Martin*, 148 Idaho at 36 (Ct.App.2009). “The statutory language is to be given its plain, obvious, and rational meaning.” *Id.* “A statute is to be construed as a whole without separating one provision from another.” *Id.* “In attempting to discern and implement the intent of the legislature, a court may seek edification from the statute’s legislative history and contemporaneous context at enactment.” *Id.* “However, if the statutory language is clear and unambiguous, a court need merely apply the statute without engaging in any statutory construction.” *Id.* “The plain meaning of a statute will prevail unless clearly expressed legislative intent is contrary or unless plain meaning leads to absurd results.” *Harris v. Alessi*, 141 Idaho 901, 910 (Ct.App.2005); citing *George W. Watkins Family v. Messenger*, 188 Idaho 537, 540 (1990).

Given the whole meaning of the statute, it applies to safe driving. The goal, as stated in the first paragraph of the statute, is to allow motorists to move only when doing so can be done “with reasonable safety” and after “giving an appropriate signal.” The plain, obvious and rational meaning is that the statute is to be interpreted in a way to make the highways safe for everyone who travels upon them. The second paragraph provides, in detail, what it means to give an “appropriate signal” with (taking the statute as a whole again) “reasonable safety.” The third paragraph requires brake lights and fair warnings for drivers behind us, and the fourth paragraph says we cannot make goofy signals (those outside of what is an “appropriate signal” – such as letting another driver know it is safe to pass by turning on our own blinker, or stopping on the side of a road with a turn signal blinker on instead of the hazard lights flashing.



The statute, taken as a whole, and given its plain meaning, cannot be unconstitutionally vague “on its face” because it is not “impermissibly vague in all of its applications.”

The State does not anticipate the defense will make a big argument about the vague on its face doctrine. Rather, the State anticipates the defense will bring the thrust of its argument against the “vague as applied” doctrine.

2. A person of ordinary intelligence can understand the plain, obvious and rational meaning of the statute, and thus, it is not void-for-vagueness as applied.

The negative treatment of I.C. § 49-808 by *Burton* is instructive on this issue because the two cases, this case and the *Burton* case, are factually distinct. In *Burton*, two lanes of travel in the same direction merged into one lane of travel. *Burton*, 149 Idaho at 750. The court determined that a driver could not determine what to do in that situation because the statute did not make it clear what type of signal “is required when two lanes simply merge.” *Id.* In this case, the lanes did not merge. Two lanes continued down the highway the entire time the Trooper followed the defendant. The defendant changed lanes from the left hand lane into the right hand lane without signaling for five seconds – an issue not at stake in the *Burton* decision. In fact, *Burton* never even considered the issue of how long a signal must be given (the issue in this case), but rather whether a signal needs to be given at all.

This leads to the nitty gritty of the defense argument, the statute is vague as applied because it can be read in one of two ways: in one way, both a person who travels down an uncontrolled highway and a person who moves from a “parked position” must signal for at least five seconds before moving from one lane to the other; in the other way, the person must be in a parked position upon the “controlled-access highway” before the requirement to signal for five

seconds kicks in. The defense version is the latter, that a person must be “parked” along a “controlled-access highway” in order for the five second rule to apply.

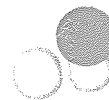
The defense position requires this court to overlook the statute as a whole, to deny the statute its “plain, obvious and rational” meaning, and to give the statute an “absurd”. The plain language of the statute provides:

A signal of intention to turn or move right or left when required shall be given *continuously* to warn other traffic. On controlled-access highways and before turning from a parked position, the signal shall be given continuously for not less than five (5) seconds and, in all other instances, for not less than the last one hundred (100) feet traveled by the vehicle before turning.

I.C. § 49-808, emphasis added.

This result stretches reason because everyone who has ever driven on a controlled-access highway would know that flying down the road requires a signal of *at least five* seconds. Controlled-access highways in Idaho have speeds up to 75 mph. At 75 mph a person travels 111 feet per second. In order for the defendant’s interpretation of the statute to be given its plain, obvious and rational meaning, a driver on a controlled-access highway would only have to turn on the blinker, count to one, and then cross from the left lane into the right lane of traffic. At those speeds and in that amount of time, other drivers would only, if they were lucky, be able to see the lane-changing driver’s blinker once. (And if they were even luckier – not be in the other lane of travel right next to the moving driver).

The result stretches the plain, obvious and rational meaning when we look at the defendant’s unstated argument – that is: a person only has to give a five second signal *when parked on a freeway*. The word park should be given its plain, obvious and rational meaning: people “park” to go into the mall, they “parallel park,” “park at an angle,” and park on the side of



residential streets and downtown city streets. Drivers do not “park” on a freeway; they break down, pull over and stop or run out of gas, but no one “parks” on a freeway.


Looking at the absurdity of only requiring a five second signal when a person is parked *and* parked next to a freeway, what do people do who are parallel parked in a spot next to the courthouse? The defendant’s interpretation of the statute would put these poor driver’s in the position where they had to driver 100 feet before turning because these drivers would fall into the second category: “in all other instances, for *not less than* one hundred (100) feet ... *before* turning! Whoa to those people who park in front of the parallel parked driver who needs to get out of his parking spot. He will have to travel *one hundred* feet *before* he can turn because he is not “parked” on the side of a controlled-access highway. This means the driver would have to go straight for one hundred feet – over barriers, other cars, and anything else in the way *before* being able to turn – but apparently signaling all the way, thank goodness. The rational meaning of the statute is that turning from a parked position in any place requires five seconds because you cannot travel 100 feet before you turn.

The plain, obvious and rational meaning of the statute, taken as a whole gives the statute a “clear and unambiguous interpretation”. A driver must signal for five seconds when traveling down a controlled-access highway, and she must also signal when turning from a parked position anywhere (the library, the drug store, city streets, (and yes, along highways too)); in *all other instances*, she must signal for 100 feet (approaching stop signs, traveling down residential and city streets). The “Idaho Driver’s Manual” states: “Proper signaling may prevent a rear-end collision. Signals must start at least 100 feet (in business or residential areas) or five seconds (on freeways or highways) before you turn or change lanes.” “Idaho Driver’s Manual, April 2011, p.34.

The statute, a) taken as a whole, b) given its plain, obvious and rational meaning, and c) not given an absurd result, leads to the conclusion that the defendant was required to signal for at least five seconds *continuously* in order to "warn other traffic", make the move with "reasonable safety", and to comply with the reasonable expectations of men and women of ordinary intelligence who would read the statute.

The trooper's stop of the defendant should be upheld because I.C. § 49-808 is not void-for-vagueness on its face or as applied to these facts.

DATED this 21st 4th day of September, 2012.

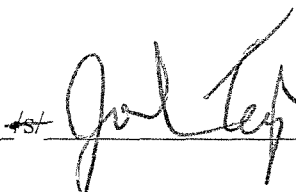

JOSHUA B. TAYLOR
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 31st 4th day of September, 2012, I caused a true and correct copy of the foregoing instrument to be served upon the attorney for the defendant by the method indicated below and addressed to the following:

Canyon County Public Defender
Lary Sisson

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☒ Placed in Court Basket
- ☐ Overnight Mail
- ☐ Facsimile
- ☐ E-Mail


JOSHUA B. TAYLOR
Deputy Prosecuting Attorney

OBJECTION TO MOTION TO
SUPPRESS EVIDENCE

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FILED
A.M. P.M.

SEP 10 2012

CANYON COUNTY CLERK
B RAYNE, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff,

vs.

MATTHEW O. BROOKS,

Defendant.

CASE NO. CR-2012-12437-C
CR-2012-12215-C


**ORDER TO PROVIDE AUDIO
RECORDING**

THIS MATTER having come before the Court upon Defendant's oral motion for Clerk of the Court to provide an audio recording of the Motion to Suppress hearing for these matters, which was held on August 16, 2012. After considering the Motion along with the previous proceedings in this matter, and for good cause appearing;

THEREFORE IT IS HEREBY ORDERED that the Clerk of the Canyon County Court shall provide to the Public Defender's Office an audio recording of the Motion to Suppress hearing for these matters, which was held on August 16, 2012.

IT IS ALSO ORDERED that the above-listed audio recording shall be provided to the Canyon County Public Defender's Office without cost to said office.

DATED this 6th day of September, 2012.



THOMAS J. RYAN
District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on the 10 day of September, 2012, I served a true and correct copy of the *Order to Provide Audio Recording* upon the individual(s) named below in the manner noted:

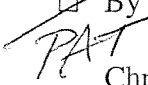
☒ By depositing copies of the same in the designated courthouse box of:

Bryan F. Taylor |
Canyon County Prosecuting Attorney
1115 Albany Street
Caldwell, Idaho

☒ By depositing copies of the same in the designated courthouse box of:

Mimura Law Offices, PLLC
510 Arthur Street
Caldwell, Idaho 836605

☒ By depositing copies of the same in the designated courthouse box of:


Chris Yamamoto
Clerk of the Court

CHRIS YAMAMOTO
Clerk of the Court

By: 

Deputy Clerk

CANYON COUNTY PUBLIC DEFENDER
MIMURA LAW OFFICES, PLLC

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Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff,

vs.

MATTHEW O BROOKS.

Defendant.

Case No. CR-2012-12437

RESPONSE TO STATE'S OBJECTION
TO MOTION TO SUPPRESS

COMES NOW, the Defendant, by and through his attorneys of record the Canyon County Public Defender's Office and hereby provides this Court and the State of Idaho, through the Canyon County Prosecutors Office, with this response to the State's Objection to Defendant's Motion to Suppress.

On September 4, 2012, the State filed an objection only on the grounds of the anticipated basis of the Defendant's Motion to Suppress. The pertinent facts in question are whether Trooper Higley had cause to stop Mr. Brooks for an alleged violation of I.C. § 49-808(2) when he observed "an abrupt and sudden" lane change after Mr. Brooks signaled for "less than two seconds" passing a slower moving vehicle while traveling 60 mph in a 75 mph zone.

FILED
A.M. 3:30 P.M.

SEP 17 2012

CANYON COUNTY CLERK
CATKINSON, DEPUTY

A. A Person Of Ordinary Intelligence Can Not Understand The Plain Meaning Of I.C. § 49-808(2).

1. Standard For Statutory Interpretation.

Where the language of a statute is plain and unambiguous, the Court must give effect to the statute as written, without engaging in statutory construction. State v. Rhode, 133 Idaho 459, 462, 988 P.2d 685 (1999); State v. Burnight, 132 Idaho 654, 659, 978 P.2d 214, 219, (1999); State v. Escobar, 134 Idaho 387, 389, 3 P.3d 65, 67 (Ct. App. 2000). The language of the statute is to be given its plain, obvious, and rational meaning. Burnight, 132 Idaho at 659, 978 P.2d at 219. There is no occasion for the Court to resort to legislative history or rules of statutory interpretation *if the language is clear and unambiguous*. Escobar, 134 Idaho at 389, 3 P.3d at 67. The Court, when engaging in statutory construction, has a duty to ascertain the legislative intent and give effect to that intent. Rhode, 133 Idaho at 462, 988 P.2d at 688. Not only must the literal words of the statute be examined by the Court, but also the context of the words within the statute, the public policy behind the statute, and its legislative history. Id.

2. The Language Of I.C. § 49-808(2) Is Clear and Unambiguous: When Driving On A Controlled Access Highway And Not Turning From A Parked Position, A Signal Must Be Given Continuously For Not Less Than One Hundred (100) Feet.

The State correctly argues that the Court must look to the plain, obvious and rational meaning of the I.C. § 49-808(2). However, the State further asks the Court to create an absurd result that contravenes the correct grammatical interpretation of how the Statute is written. Specifically, I.C. § 49-808(2) states:

A signal of intention to turn or move right or left when required shall be given continuously to warn other traffic. On a controlled access highway and before turning from a parked position, the signal shall be given continuously for not less than five (5) seconds and, in all other instances, for not less than the last one hundred (100) feet traveled by the vehicle before turning.

The second sentence of this section is a complex sentence containing an independent clause with two (2) prepositional phrases modifying a noun and verb joined by the conjunction “and” to a dependant clause with two (2) prepositional phrases modifying the same noun and verb.

Splitting the sentence into its independent and dependant clauses, results in the following statements: (1) "On a controlled access highway and before turning from a parked position, the signal shall be given continuously for five (5) seconds"; and (2) "In all other instances [on a controlled access highway], [the signal shall be given] for not less than the last one hundred (100) feet traveled by the vehicle before turning."

Beginning with the sentence preceding the conjunction, the first statement contains a compound prepositional phrase modifying the noun "signal". The first element begins with the word "on" used as a function to indicate location of something. For example, it is akin the following uses of the same word: "*on* the side of the house" and "*on* a string". The second element begins with the word "before" used synonymously with the phrase "*in advance of*" or "*before*". For example, it is akin to the following phrases: "*in advance of* coming to the house" or "*before* walking out the door." The conjunction "and" used in this phrase means that noun is modified by both statements in this phrase. That is to say, the noun directly following is modified in the following manner: *it takes place only on a controlled access highway and before turning from a parked position.*

Secondly, the independent clause includes the preposition "for" creating a prepositional phrase identifying the duration of time modifying the verb phrase "shall be given". For example, it is akin to the following uses of the same word: "*for* five minutes" and "*for* more than 1 year". Taking the parts of this sentence and reordering them according to their correct grammatical usage results in the following: *The signal when turning from a parked position on a controlled access highway shall be given continuously for not less than five (5) seconds.*

The dependant clause following conjunction includes two (2) prepositional phrases: (1) "in all other instances"; and (2) "for not less than the last one hundred (100) feet traveled by the vehicle before turning." This dependant clause begins with a conjunction creating a relationship to information found elsewhere in the independent clause preceding it.

The question now becomes, upon what does the dependant clause depend? That is to say, what do the prepositional phrases "in all other instances" and "for not less than one hundred (100) feet traveled by the vehicle before turning" replace and/or modify

from the preceding independent clause?

When reviewing the independent clause, the rational result is to replace the prepositional phrase modifying the verb phrase in the independent clause with the prepositional phrase attributable to the same verb phrase in the dependant clause. In this case, the phrase indicating “duration of time” in the dependant clause would rationally replace the phrase modifying “the duration of time” in the independent clause. That is to say, the phrase “for not less than the last one hundred (100) feet traveled by the vehicle before turning” in the dependant clause should replace the phrase “for not less than five (5) seconds” in the independent clause.

Next, the question becomes what does the other prepositional phrase (“in all other instances”) in the dependant clause replace and/or modify in the independent clause? There are three (3) possibilities:

1. Modify both parts of the prepositional phrase in the independent clause resulting in the following: *the signal, in all other instances other than, on a controlled access highway when turning from a parked position shall be given continuously for not less than the last one hundred (100) feet traveled by the vehicle before turning;*

2. Modify only first part of the prepositional phrase in the independent clause (“on a controlled access highway”) resulting in the following: *the signal before turning from a parked position in all instances other than when on a controlled access highway shall be given continuously for not less than the last one hundred (100) feet traveled by the vehicle before turning.*

3. Modify only second part of the prepositional phrase in the independent clause (“before turning from a parked position”) resulting in the following: *the signal on a controlled access highway in all instances other than when turning from a parked position shall be given continuously for not less than the last one hundred (100) feet traveled by the vehicle before turning.*

A(2)(i) Misinterpreting The Language Within This Sentence Could Result In Non-Rational Results.

The State correctly highlights that there could be absurd results when applying certain variations of possible meanings of this sentence. For example, if the sentence were to read “*the signal, in all other instances other than on a controlled access highway when turning from a parked position shall be given continuously for not less than the last one hundred (100) feet traveled by the vehicle before turning,*” it could potentially result in someone having drive one hundred (100) feet from a parked position before being able to turn from the parked position. As the State highlights, this would be a nonsensical interpretation; the Defense agrees with the State that this clearly is not an appropriate rational result. It is important to note that there could be rational applications of this sentence that are not farcical in their application; however, given the ambiguity of the results, this not the appropriate meaning of the Statute.

Furthermore, it would be equally absurd if the sentence were to read “*the signal before turning from a parked position in all instances other than when on a controlled access highway shall be given continuously for not less than the last one hundred (100) feet traveled by the vehicle before turning.*” The same aforementioned result would ensue. The Defense agrees with the State that this is not an appropriate meaning of the Statute.

When taken in context of the sentence, the compound prepositional phrase in the independent clause modifying the noun includes a location and time element (“before”). It is reasonable, rational and creates a clear and unambiguous meaning to modify only the time element in the prepositional phrase in the independent clause modifying the noun with the appropriate time element (“in all other instances”) in the dependant clause. The compound nature of the prepositional phrase further indicates that it is appropriate for the single element dependant clause to only modify a single element of the compound phrase in the independent clause. Given the absurd or contrary results mentioned above, there is only one meaning left for the dependant clause: *The signal on a controlled access highway in all instances other than when turning from a parked position shall be given continuously for not less than the last one hundred (100) feet traveled by the vehicle before turning.*

A(2)(ii) No Reasonable Grammatical Interpretation of I.C. § 49-808(2) Results In The State's Proffered Interpretation Of The Statute.

Without giving any consideration to clear and unambiguous language of the Statute as discussed above, the State argues such things as “everyone who has ever driven on a controlled-access highway would know that flying down the road requires a signal of *at least five seconds*.” The State focuses its argument on possible absurd results by applying a misinterpretation of the plain language meaning of the Statute without considering the only rational clear and unambiguous meaning of the Statute: *The signal on a controlled access highway in all instances other than when turning from a parked position shall be given continuously for not less than the last one hundred (100) feet traveled by the vehicle before turning.*

After ignoring the proper grammatical interpretation, the State offers the following interpretation of I.C. § 49-808(2): A driver must signal for five (5) seconds when turning from any parked position and when changing lanes (turning) on a controlled access highway. In all other instances, a drive must signal for one hundred (100) feet traveled by the vehicle before turning.

The State then makes the leap to legislative intent in order support its explanation. Highlighting both the need for “reasonable safety” and the necessity for giving “an appropriate signal,” they buttress their argument with statements from the Idaho Driver’s Manual. The Driver’s Manual, while instructive on due caution, was written with different language than the Statute (freeways or highways versus controlled access highway); it is not instructive on law. If the State’s proffered interpretation were to be adopted, it would directly conflict with the language of the Idaho Driver’s Manual. For example, the State wants the Court to adopt a requirement that on all non-controlled access highways, a driver only has to signal for one hundred (100) feet traveled by the vehicle before turning. The Idaho Driver’s Manual would require that on any freeway or highway, a driver signal for five (5) seconds.


This inherent ambiguity is not explained by the State; the State fails to explain why its proffered interpretation conflicts with that of the Idaho Driver’s Manual. The State’s explanation speaks for itself, it is the wrong explanation.

3. There Is Only One Reasonable, Rational, Plain Language Meaning To I.C. § 49-808(2): A Driver Is Only Obligated To Signal For Not Less Than The Last One Hundred (100) Feet Traveled By The Vehicle Before Turning On A Controlled Access Highway.

There is only one reasonable result that gives effect to the plain language meaning of the Statute: *The signal on a controlled access highway in all instances other than when turning from a parked position shall be given continuously for not less than the last one hundred (100) feet traveled by the vehicle before turning.* While the State argues that this result stretches reason, that this result does not afford enough time to change lanes safely, etc... It does not change the fact that the Legislature deemed one hundred (100) feet an acceptable distance for a signal on a controlled access highway. The State fails to explain why their proffered interpretation completely ignores the rules of grammatical interpretation/structure. Given the fact that the State was unable to do so, it is reasonable to say that a person of ordinary intelligence cannot understand the plain, obvious and rational meaning of this Statute.

In this case, there are only two conclusions; either, Officer Higley did not have probable cause to stop Mr. Brooks or this Statute, as written, is void-for-vagueness. Either result requires that all evidence obtained as a result of this stop be suppressed.

DATED Monday, September 17, 2012




Jim Goldmann
Attorney for the Defendant

CERTIFICATE OF SERVICE

I hereby certify that on Monday, September 17, 2012, I served a true and correct copy of the within Response to Objection to Motion to Suppress upon the individual(s) names below in the manner noted:

- ☒ By placing such a copy in the Prosecutor's basket located in the Clerk's office on the second floor of the Canyon County Courthouse.

Canyon County Prosecutor
1115 Albany St.
Caldwell, ID 83605



Jim Goldmann
Attorney for the Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **THOMAS J. RYAN** DATE: **SEPTEMBER 18, 2012**

THE STATE OF IDAHO,)	COURT MINUTE
)	
Plaintiff,)	CASE NO: CR2012-12437-C
)	CR2012-12215-C
)	
vs.)	TIME: 1:30 P.M.
)	
MATTHEW O. BROOKS,)	DCRT4 (312-317)
)	
Defendant.)	REPORTED BY: Kim Saunders
)	

This having been the time heretofore set for **pre-trial** in the above entitled matters, the State was represented by Mr. Josh Taylor, Deputy Prosecuting Attorney for Canyon County, Idaho; and the defendant was not present in court and represented by Mr. Jim Goldmann.

In answer to the Court's inquiry, Mr. Goldmann confirmed he was now handling these cases.

The Court advised counsel it had signed an order allowing the defendant to appear telephonically and inquired whether the defendant's presence was required.

Mr. Goldmann was unsure.

The Court indicated it had received a reply brief on the pending motion to suppress which it had not adequately reviewed.


The Court noted trial was set for the 25th day of September, 2012 and speedy was the 20th day of November, 2012. The Court proposed vacating that trial date and re-setting the matter for the 16th day of October, 2012 before Judge Morfitt with a continued pre-trial conference, where the defendant could appear telephonically, on the 1st day of October, 2012 at 2:15 p.m. That would allow time for the Court to consider the new briefing and render a decision on the motion to suppress.

Mr. Goldmann was in agreement.

Mr. Taylor objected as he had four (4) other cases set for trial that day and there was a good possibility this case would proceed to trial.

In answer to the Court's inquiry, both of counsel indicated they could be prepared to proceed on the 25th if the Court had the decision on the motion to suppress filing tomorrow at 5:00 p.m.

The Court indicated it would contact the parties via telephonic conference if it was unable to render a decision by 5:00 p.m. tomorrow, otherwise the trial was to remain as set.


Deputy Clerk

reports, photos, documents, and statements made by the defendant which were obtained by the State as a result of an unlawful seizure and search of the Defendant and the Defendant's vehicle.

Trooper Blake Higley initiated a traffic stop of the Defendant on Interstate Highway 84 near Caldwell, Idaho. The Defendant initially drew the attention of Trooper Higley because he was driving at a speed of sixty (60) mph in a seventy-five (75) mph zone. Higley then observed the Defendant change lanes from the left lane to the right without signaling the turn for the requisite five (5) seconds as required by statute. I.C. §49-808(2). According to the Officer, the Defendant signaled for approximately two seconds.¹ At that point, Trooper Higley initiated the stop.

Trooper Higley approached the vehicle on the passenger side and made contact with the Defendant. He observed a pack of cigarettes sitting on the front passenger seat and testified that he also saw a small plastic bag containing what he believed to be methamphetamine sticking out of the cigarette pack. Additionally, Trooper Higley testified that he could smell the odor of marijuana and observed a small metal cone that he "knew" from his training was part of a pipe used to smoke marijuana. At this point, Trooper Higley reached into the vehicle and seized the cigarette pack that contained what he believed to be methamphetamine.

The Defendant was arrested and Trooper Higley conducted a search of the vehicle and found a marijuana pipe. He also found two syringes with injection needles, a spoon, rubber band, and baggies inside a suitcase located in the vehicle.

PLAIN VIEW DOCTRINE

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. If a search or seizure is conducted without a warrant it is deemed to be unreasonable unless the State meets the burden of demonstrating that the search or seizure fell within a recognized exception to the warrant requirement. *State v. Tucker*, 132 Idaho 841, 842, 979 P.2d 1199, 1200 (1999); *State v. Holcomb*, 128 Idaho 296, 302, 912 P.2d 664, 670 (Ct.App.1995).

Under the plain view doctrine, a warrantless seizure can be justified where two

¹ Trooper Higley testified that a vehicle traveling at a speed of 55 mph will travel 80 feet per second. Thus, a vehicle that signals for two seconds travels approximately 160 feet at 55 mph.

requirements are met: (1) the officer must lawfully make an initial intrusion or otherwise properly be in a position to observe a particular area; and (2) it must be immediately apparent that the items observed are evidence of a crime or otherwise subject to seizure. *State v. Hagedorn*, 129 Idaho 155, 159, 922 P.2d 1081, 1085 (Ct.App.1996).

The Court finds that the facts of this case clearly establish that the second element of this doctrine was met when the Trooper observed the plastic baggie containing a substance that he believed to be methamphetamine.

The issue presented by the Defendant is that the Trooper did not lawfully make a traffic stop putting at issue the first requirement of the plain view doctrine – was the stop valid so that the officer was properly in a position to observe a particular area.

TRAFFIC STOP

A traffic stop by an officer constitutes a seizure of the vehicle's occupants and implicates the Fourth Amendment's prohibition against unreasonable searches and seizures. *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S.Ct. 1391, 1396, 59 L.Ed.2d 660, 667 (1979); *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d, 1284, 1286 (Ct.App.1996). Under the Fourth Amendment, an officer may stop a vehicle to investigate possible criminal behavior if there is a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws. *United States v. Cortez*, 449 U.S. 411, 417, 101 S.Ct. 690, 695, 66 L.Ed.2d 621, 628 (1981); *State v. Rawlings*, 121 Idaho 930, 932, 829 P.2d 520, 522 (1992); *State v. Flowers*, 131 Idaho 205, 208, 953 P.2d 645, 648 (Ct.App.1998).

Here, Trooper Higley testified that the Defendant failed to use his turn signal for the requisite five (5) seconds as required under I.C. §49-808(2). Defendant argues that under I.C. §49-808(2), the statute requires use of a turn signal for one hundred (100) feet. I.C. §49-808(2) provides:

A signal of intention to turn or move right or left when required shall be given continuously to warn other traffic. **On controlled-access highways and before turning from a parked position, the signal shall be given continuously for not less than five (5) seconds and, in all other instances, for not less than the last one hundred (100) feet traveled by the vehicle before turning.**

(Emphasis added)

Importantly, Defendant stipulates that Interstate Highway 84 is a controlled-access highway. Defendant argues that the five (5) second requirement applies only in those situations when a person is initiating a turn onto a controlled-access highway from a parked position. Defendant focuses on a plain language argument and the use of the word “and” in the statute. Defendant’s assertion is that if the legislature meant for the statute to require use of a turn signal for five (5) seconds when changing lanes on a controlled access highway, it would have used the word “or.” If the legislature had this intention the statute would read: “On controlled-access highways **or** before turning from a parked position”

Defendant points out that no Idaho case law has addressed the issue as presented in this case. Other cases have considered other subsections of the statute and are factually distinguishable. *See Burton v. State Dept. of Transp.* 149 Idaho 746, 240 P.3d 933 (Ct.App.2010); *See State v. Dewbre*, 133 Idaho 663, 991 P.2d 338 (CtApp. 1999).

Additionally, Defendant’s supplemental briefing provides a review of the turn signal laws throughout the United States. Defendant argues that other states like Louisiana, Kansas, Oklahoma, and Wyoming have a similar statute to Idaho’s statute requiring use of a turn signal before turning for one hundred (100) feet. In the case of Utah the requirement is two (2) seconds. Defendant’s purview of other state statutes, while interesting, does not provide legal precedent for this Court. Considering there is no case law on point, this Court must look to the plain language of the Idaho statute.

The State reads the statute to require use of a turn signal for five (5) seconds in two different situations: (1) when changing lanes on a controlled-access highway, and (2) when making a turn from a parked situation. Further, the State provides a common sense argument based on public safety. The legislature intended to protect the public in requiring drivers to use their turn signals for five (5) seconds when driving at high speeds on a freeway. The State cites to the Idaho Driver’s Manual advising that “signals must start at least 100 feet (in business or residential areas) or five seconds (on freeways or highways) before you turn or change lanes.” Idaho Driver’s Manual, April 2011, Ch. 2 pg. 9.

As pointed out above, the Defendant argues that had the legislature intended the law to be as

the State claims, it would have used the word “or” instead of “and” in the last sentence of subsection (2). Further, the Defendant argues that the statute is open to either interpretation and is therefore unconstitutionally vague.

ANALYSIS

A. Officer’s good faith belief based on plain language of statute

Here, Trooper Higley was operating on the belief that drivers on Interstate Highway 84 are required to use a turn signal for five (5) seconds before changing lanes. Indeed, this Court and other district courts have interpreted the statute to so require.² That is, I.C. §49-808(2) requires that on controlled-access highways the signal shall be given continuously for not less than five (5) seconds. Defendant stipulates that he was driving on a controlled-access highway.

If Trooper Higley’s interpretation of the law and facts before him was incorrect it could be considered a mistake of fact and/or a mistake of law.

In Fourth Amendment applications, the reasonableness of police conduct is judged against an objective standard. *State v. Weaver*, 127 Idaho 288, 291, 900 P.2d 196, 199 (1995). We examine whether “the facts available to the officer at the moment of the seizure ... [would] ‘warrant a man of reasonable caution in the belief’ that the action taken was appropriate.” *Terry v. Ohio*, 392 U.S. 1, 21–22, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889, 906 (1968). *See also Illinois v. Rodriguez*, 497 U.S. 177, 188, 110 S.Ct. 2793, 2801, 111 L.Ed.2d 148, 161 (1990). This standard allows room for some mistakes on the part of police officers, so long as the mistakes are those of reasonable persons. *Brinegar v. United States*, 338 U.S. 160, 176, 69 S.Ct. 1302, 1311, 93 L.Ed. 1879, 1890–91 (1949). *See also State v. Buhler*, 137 Idaho 685, 688, 52 P.3d 329, 332 (Ct.App.2002); *State v. McCarthy*, 133 Idaho 119, 124, 982 P.2d 954, 959 (Ct.App.1999); *State v. Hawkins*, 131 Idaho 396, 401, 958 P.2d 22, 27 (Ct.App.1998). “[I]n order to satisfy the ‘reasonableness’ requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government ... is not that they always be correct, but that they always be reasonable.” *Rodriguez*, 497 U.S. at 185, 110 S.Ct. 2793, 2800, 111 L.Ed.2d at 159. Subjective good faith on the part of the officer is not enough. As the United States Supreme Court has explained, “If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be ‘secure in their persons, houses, papers, and effects,’ only in the discretion of the police.” *Terry*, 392 U.S. at 22, 88 S.Ct. 1868, 1880, 20 L.Ed.2d

² *See State v. Roberto Diaz*, CR 2012-8900*C; *See State v. Michael Luka Iocolucci*, CR 2012-800*C, CR 2012-719*C before the Honorable Molly Huskey.

at 906. The mistake must be one that would be made by a reasonable person acting on the facts known to the officer. *Rodriguez*, 497 U.S. at 186, 110 S.Ct. 2793, 2800, 111 L.Ed.2d at 159–60; *Hawkins*, 131 Idaho at 401, 958 P.2d at 27. In sum, a traffic stop will not violate the Fourth Amendment if the officer reasonably suspects a violation of traffic laws even if later investigation dispels the suspicion.

State v. Horton, 150 Idaho 300, 302-03, 246 P.3d 673, 675-76 (Ct. App. 2010), review denied (Jan. 24, 2011).

The *Horton* Court recognized that the line between a mistake of fact and a mistake of law is not always easy to ascertain. *Horton*, 150 Idaho 303. In *State v. McCarthy*, 133 Idaho 119, 982 P.2d 954 (Ct.App.1999), the Court of Appeals found an officer's mistaken belief (the location of a speed limit sign) to be a mistake of law. The Court discussed the split of authority from other jurisdictions as to whether a mistake of law can be held to be reasonable. In *McCarthy*, the Court did not have to decide if a mistake of law is unreasonable *per se* because the Court characterized the mistake as not objectively reasonable. *Id.* at 125.

Here, if Trooper Higley's belief that Defendant was required to use his turn signal for five (5) seconds turns out to be incorrect, his mistake would most likely be characterized as a mistake of law. While some jurisdictions would find a mistake of law to be unreasonable *per se*, other jurisdictions would look to the standard applicable to a mistake of fact and ask if the mistake was objectively reasonable. Since Idaho precedent has not established the standard when considering a mistake of law, this Court will use the reasonableness standard. Trooper Higley had a good faith belief that Defendant was required to use his turn signal for five (5) seconds and considering the application of this statute by this Court and Judge Huskey, his conduct was that of a reasonable person acting under the facts known at the time.

B. Constitutionality of Statute

This Court cannot find any legal precedent to support Defendant's assertion that the statute is unconstitutionally vague on its face. In *Burton v. State Dept. of Transp.*, *supra*, the Court of Appeals did find the statute to be unconstitutionally vague as applied to the facts in that case. However, the facts of that case are unrelated and therefore inapplicable in this case.

Defendant's response brief provides a persuasive argument in favor of its claim that the statute requires a signal for not less than one hundred (100) feet before turning on a controlled

access highway. This argument is based on a grammatical interpretation in which the Defendant dissects the statute word by word, names the grammatical parts of the sentence, and adds language that the legislature did not include. Importantly, this Court is not to amend statutes as written by the legislature. Our Appellate Court recognizes "it is not the province of the Court to change the plain meaning of the words used by the legislature." *Mintun v. State*, 144 Idaho 656, 664, 168 P.4d 40, 48 (Ct.App.2007); *See State v. Holden*, 126 Idaho 755, 761, 890 P.2d 341, 347 (Ct.App.1995); *See Barnes v. Hinton*, 103 Idaho 619, 620, 651 P.2d 553, 554 (Ct.App.1982). A court may not legislate nor by statutory construction change the words of the statute to include other conduct. *Id.*; *citing In re Dampier*, 46 Idaho 195, 206, 267 P. 452, 455 (1928).

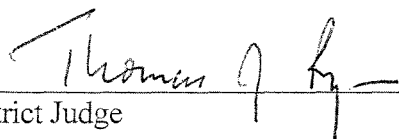
Finally, Defendant's argument that a person of ordinary intelligence cannot understand the plain meaning of the statute is unpersuasive. This Court looks to the common sense reading of the statute, the Idaho Driver's Manual, and the legislature's interest in protecting public safety. This Court is persuaded by the public safety argument that the legislature intended drivers on the freeway to use turn signals for longer periods of time. It makes sense that the legislature would require drivers operating on our freeways at higher speeds to signal for longer than drivers "in all other instances." While not a statement of the law, the Idaho Driver's Manual does provide notice of the requirement to use a turn signal for five (5) seconds on controlled-access highways.³

Therefore,

ORDER

IT IS HEREBY ORDERED that Defendant's Motion to Suppress is DENIED.

Dated this 19th day of September, 2012.



District Judge

³ This Court recognizes that the Defendant is a licensed Idaho state driver, DL#ZF380561E.

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be served upon the following via U.S. Mail, postage prepaid, facsimile transmission or by hand delivery:

BRYAN F. TAYLOR
JOSH TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
1115 Albany St.
Caldwell, ID 83605

MARK MIMURA
LARY SISSON
CANYON COUNTY PUBLIC DEFENDER
510 Arthur St.
Caldwell, ID 83605

9/19/12

Date

K. Gordill

Deputy Clerk

jbt

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

F I L E D
A.M. P.M.
SEP 21 2012

CANYON COUNTY CLERK
B HATFIELD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

MATTHEW O BROOKS,

Defendant.

CASE NO. CR2012-12437

**MOTION TO SHORTEN TIME
FOR HEARING AND NOTICE
OF HEARING**

COMES NOW, JOSHUA B. TAYLOR, Deputy Prosecuting Attorney of the Canyon County Prosecuting Attorney's Office, State of Idaho, and hereby moves this Court for an Order to Shorten Time for a Motion to Continue the Jury Trial to be heard. That the hearing is necessary prior to the trial date of September, 25th, 2012 and that the delay in filing was caused by expert witness unavailability and need to notify defense of the state's motion because their client is travelling here from Oregon.

NOTICE OF HEARING

Notice is hereby given that a hearing on the Motion filed in the above entitled matter is scheduled for the 24th day of September, 2012, at the hour of 9a.m., before the Honorable James C. Morfitt.

DATED this 21st day of September, 2012.

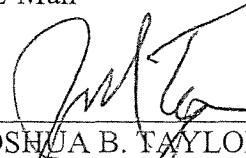

JOSHUA B. TAYLOR
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 21st day of September, 2012, I caused a true and correct copy of the foregoing instrument to be served upon the attorney for the defendant by the method indicated below and addressed to the following:

Canyon County Public Defender

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☒ Placed in Court Basket
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ E-Mail


JOSHUA B. TAYLOR
Deputy Prosecuting Attorney

jbt

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

FILED
A.M. 2:10 P.M.
SEP 24 2012
CANYON COUNTY CLERK
B HATFIELD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

MATTHEW O BROOKS,

Defendant.

CASE NO. CR2012-12437

**MOTION TO CONTINUE
JURY TRIAL AND
NOTICE OF HEARING**

COMES NOW, JOSHUA B. TAYLOR, Deputy Prosecuting Attorney of the Canyon County Prosecuting Attorney's Office and hereby moves this Court for an Order vacating the Jury Trial herein and resetting the same for any time after October 1, 2012, for the reason that the state's witness will be unavailable for said Jury Trial on September, 25th, 2012.

NOTICE OF HEARING

Notice is hereby given that a hearing on the Motion filed in the above entitled matter is scheduled for the 24th day of September, 2012, at the hour of 9 a.m., before the Honorable Judge Morfitt.

MOTION TO CONTINUE

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ORIGINAL

DATED this 21st day of September, 2012.



JOSHUA B. TAYLOR
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 21st day of September, 2012,
I caused a true and correct copy of the foregoing instrument to be served upon the attorney for
the defendant by the method indicated below and addressed to the following:

Canyon County Public Defender

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☒ Placed in Court Basket
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ E-Mail


JOSHUA B. TAYLOR
Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **JAMES C. MORFITT** DATE: **SEPTEMBER 24, 2012**

THE STATE OF IDAHO,)	
	)	COURT MINUTE
Plaintiff,)	
	)	CASE NO. CR-2012-12437*C
-vs-	)	CR-2012-12215*C
)	
	)	TIME: 9:00 A.M.
MATTHEW O. BROOKS,)	
	)	REPORTED BY: Carole Bull
Defendant.)	
_____	)	DCRT 4 (912-920)

This having been the time heretofore set for hearing on the **State's Motion to Shorten Time and Motion to Continue Jury Trial** in the above entitled matters, the State was represented by Mr. Josh Taylor, Deputy Prosecuting Attorney for Canyon County, and the defendant did not appear, but was represented by counsel, Mr. Lary Sisson.

Mr. Sisson advised the Court the defendant lived outside of Oregon and the Court had previously allowed him to appear telephonically at previous hearings. However, Mr. Sisson noted that his office had been unable to contact the defendant regarding today's hearing and that he did not have authorization to proceed without his presence.

Mr. Taylor advised the Court the basis of the State's motion to continue trial was that the defendant's witness would be unavailable on September 25, 2012.

The Court noted it had received the State's motions, but that there was no supporting affidavit of which witness would not be available and why.

Mr. Sisson clarified he did not have the defendant's authority to proceed in his absence on these matters.

The Court advised counsel it would pass the matter and allow Mr. Sisson an opportunity to contact the defendant to see if the matter could be taken up later on the morning calendar.

The Court addressed with counsel the infraction offenses that were charged in the companion case (CR2012-12215*C); and all parties agreed those matters should be severed from the felony case. The Court noted it would address the issue of the infraction offenses when it addressed the Motion to Shorten Time and Motion to Continue later today.

The Court passed the matter at 9:20 a.m.

Later this date at 11:40 a.m., the clerk was advised that this matter would not be addressed again on today's date, but rather continued to the trial set for tomorrow, September 25, 2012 at 9:00 a.m., at which time the Court would address the pending motions.


Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUCICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **JAMES C. MORFITT** DATE: **SEPTEMBER 25, 2012**

THE STATE OF IDAHO,)	COURT MINUTES
)	
Plaintiff,)	CASE NO. CR-2012-12437*C
)	CR-2012-12215*C
)	
vs)	TIME 9:00 A.M.
)	
MATTHEW O. BROOKS,)	REPORTED BY: Debora Kreidler
)	
Defendant.)	DCRT 4 (911-918)
)	

This having been the time heretofore set for **Jury Trial** in the above entitled matters, the State was represented by Mr. Josh Taylor, Deputy Prosecuting Attorneys for Canyon County, Idaho, and the defendant was not present, however was represented by counsel, Mr. Jim Goldmann.

The Court called the cases, noted the parties present and inquired.

In answer to the Court's inquiry, Mr. Goldmann advised that he was not privately retained in this case.

The Court noted that these cases were set for jury trial to commence on this date, reviewed the status conference heard the previous date and noted that the defendant had failed to appear for both hearings. Further, the Court reviewed the State's Motion to Continue and reviewed the issue of the infractions filed in the consolidated misdemeanor case.

Mr. Goldmann advised the Court that the defendant was not present, advised that he had spoken with the defendant on the 18th of September and advised that the defendant had stated it would be difficult for him to be present. Further, Mr. Goldmann advised that he had not heard further from the defendant, advised that he had an incorrect address for the defendant and advised that Mr. Sisson had tried to call the defendant three (3) times on the previous date.

The Court noted the defendant resided in Oregon.

Mr. Goldmann concurred.

The Court noted the defendant had previously posted bond and inquired.

In answer to the Court's inquiry, Mr. Taylor requested the Court issue a bench warrant in these matters, advised that he would request a lower bond if the defendant resided in the area, however with the defendant residing in Oregon, he would request a higher bond to allow the defendant to be extradited if the defendant were arrested. Further, Mr. Taylor presented statements regarding the State not being prepared to proceed to jury trial on this date.

The Court noted the defendant's previous bond was set in the amount of \$25,000.00.

Mr. Taylor requested a total bond in the amount of \$50,000.00.

Mr. Goldmann advised that he believed the defendant would be traveling to Idaho sometime due to the defendant's children residing in Idaho.

The Court expressed opinions regarding the defendant not being present, reviewed previous proceedings and noted the defendant had notice of the hearings.

Further, the Court noted the defendant had previously entered a not guilty plea and had demanded speedy trial.

The Court forfeited any bond set in these matters and **issued a bench warrant due to the defendant's failure to appear in the amount of \$50,000.00.**

The Court noted that in CR-2012-12215*C, there were three infractions filed. Further, the Court advised that according to Idaho Infraction Rule 3, it did not believe the infractions could be consolidated into the same case as a felony that was set for jury trial.

Mr. Taylor reviewed the previous hearing regarding the infractions, requested the infractions be remanded to magistrate court and noted that the infractions did not carry jail time.

Mr. Goldmann advised that he had nothing further to add regarding the infractions.

The Court advised that it was not appropriate under Idaho Infraction Rule 3 to have infractions consolidated with a misdemeanor and a felony, **therefore the Court ordered the three (3) infractions in CR-2012-12215*C severed, remanded the infractions to the clerk to magistrate court and advised that the defendant was not entitled to the assistance of a public defender on the infraction cases since they did not carry jail time.**

The Court directed Mr. Goldmann to advise the defendant of the severed infractions.

The Court adjourned at 9:18 a.m.

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Deputy Clerk



OR

L

MARK J. MIMURA
CANYON COUNTY PUBLIC DEFENDER

FILED 210
A.M. P.M.

SEP 27 2012

Lary G. Sisson
510 Arthur Street
Caldwell, Idaho 83605
Phone: (208) 639-4585
Fax: (208) 639-4611
Idaho State Bar No. 6072

CANYON COUNTY CLERK
K GORDILLO, DEPUTY

Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,

Plaintiff

vs.

MATTHEW BROOKS,

Defendant.

CASE NO. CR-2012-12437-C
CR-2012-12215-C

MOTION FOR PERMISSION TO
APPEAL

COMES NOW, the above-named Defendant, MATTHEW BROOKS, by and through his attorney of record, the Canyon County Public Defender's Office, and hereby moves this Honorable Court for Permission to Appeal the Court's denial of Defendant's Motion to Suppress in the above-listed matters.

This Motion is based on the following:

1. On June 29, 2102, Defendant filed a Motion to Suppress in these matters.
2. On August 16, 2012, a hearing was held on the Motion to Suppress.
3. On September 19, 2012, the Court issued a Memorandum Decision deny Defendant's Motion to Suppress.

4. Pursuant to Rule 12 of the Idaho Appellate Rules permission may be granted by the Supreme Court to appeal from an interlocutory order or judgment of a district court in a criminal action, which:

- A. is not otherwise appealable under the Appellate rules, but
- B. involves a controlling question of law and
- C. there is substantial grounds for difference of opinion, and
- D. an immediate appeal from the order or decree may materially advance the orderly resolution of the litigation.

5. The interlocutory order denying Defendant's motion to suppress meets all the criteria listed above.

6. In addition, since Defendant failed to appear for his trial, permission to appeal may be an appropriate use of time until Defendant actually appears in Idaho for a trial.

Defendant reserves the right to supplement this Motion with additional arguments, documents and evidence.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that attorney for Defendant will bring up for hearing the above Motion at the Canyon County District Courthouse, 1115 Albany Street, Caldwell, Idaho, on the 10th day of October, 2012, at the hour of 10:30 a.m. or as soon thereafter as can be heard before the Honorable Thomas J. Ryan.

DATED this ____ day of September, 2012.

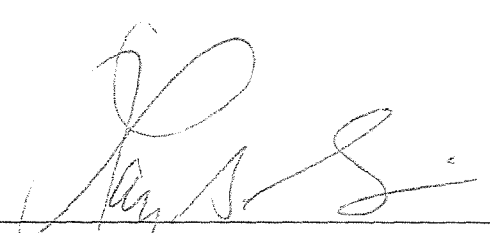
LARY G. SISSON
Assistant Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of September, 2012, I served a true and correct copy of the within and foregoing document upon the individual(s) named below in the manner noted:

☒ By delivering copies of the same to the courthouse box of the attorney(s) indicated below.

Canyon County Prosecutor's Office
1115 Albany Street
Caldwell, Idaho 83605



LARRY G. SISSON
Assistant Public Defender

MARK J. MIMURA
CANYON COUNTY PUBLIC DEFENDER

Lary G. Sisson
510 Arthur Street
Caldwell, Idaho 83605
Phone: (208) 639-4585
Fax: (208) 639-4611
Idaho State Bar No. 6072

Attorneys for Defendant

F I L 370
A.M. P.M.
SEP 27 2012

CANYON COUNTY CLERK
K GORDILLO, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,

Plaintiff

vs.

MATTHEW BROOKS,

Defendant.

CASE NO. CR-2012-12437-C
CR-2012-12215-C

**MOTION TO RECONSIDER
ORDER DENYING MOTION TO
SUPPRESS**

COMES NOW, the above-named Defendant, MATTHEW BROOKS, by and through his attorney of record, the Canyon County Public Defender's Office, and hereby moves this Honorable Court to reconsider its Order to Denying Defendant's Motion to Suppress in the above-listed matters.

This Motion is based on the following:

1. The Court considered that the officer may have made a mistake of law when interpreting the meaning and application of Idaho Code, Section 49-808(2).
2. Since the Court concluded that there is not a standard of review for a mistake of law in Idaho, then the Court determined that it would use a "reasonableness standard".

3. However, Defendant argues that the Court should follow the precedents from:
 - A. The Idaho Supreme Court as set forth in *State v. Guzman*, 122 Idaho 981 (1992); and
 - B. The Ninth Circuit Court of Appeals as set forth in *U.S. v. Lopez-Soto*, 205 F.3d 1101 (9th Cir. 2000) and *U.S. v. King*, 244 F.3d 736 (9th Cir. 2001)
4. In *State v. Guzman*, the Idaho Supreme Court unequivocally rejected the good faith exception to the exclusionary rule based on Article I, Section 17 of the Idaho Constitution.
5. Part of the decision in *U.S. v. Lopez-Soto* states: We have no doubt that Officer Hill [the investigating officer] held his mistaken view of the law in good faith, but there is no good-faith exception to the exclusionary rule for police who do not act in accordance with governing law. See *United States v. Gantt*, 194 F.3d 987, 1006 (9th Cir. 1999). To create an exception here would defeat the purpose of the exclusionary rule, for it would remove the incentive for police to make certain that they properly understand the law that they are entrusted to enforce and obey. We therefore hold that Officer Hill violated the Fourth Amendment when he stopped Lopez-Soto, and that the evidence gathered as a result of the unconstitutional stop must be suppressed. See *Wong Sun v. United States*, 371 U.S. 471, 484-85 (1963).”
6. The final decision in *U.S. v. King* states: “Although Allen [the investigating officer] acted reasonably and his interpretation of the traffic law was reasonable, he was nonetheless mistaken in his belief that King's conduct

violated the law. Because an officer's mistake of law cannot form the basis for reasonable suspicion to initiate a traffic stop, we reverse the district court's denial of King's motion to suppress.”

7. The Idaho Supreme Court’s decision in *State v. Guzman* is binding on the Court.
8. Because Idaho falls within the federal jurisdiction of the Ninth Circuit Court of Appeals, the decisions in *U.S. v. Lopez-Soto* and *U.S. v. King* should be highly persuasive to the Court.
9. Additionally, the Court determined that Idaho Code, Section 49-808(2) is not unconstitutionally vague.
10. However, the Court does not clearly, unambiguously and specifically provide an interpretation of the statute.
11. More specifically, the court does not interpret how the phrase, “before turning from a parked position” relates to the phrase, “On controlled-access highways” – if it relates at all. These two phrases are connected to one another with the conjunction “and”.
12. Idaho case law is clear that a statute must be construed so that effect is given *to every word and clause of a statute*. *State v. Baer*, 132 Idaho 416, 417-18, 973 P.2d 768, 769-70 (Ct.App.1999) (emphasis added).
13. Furthermore, the Court asserts that in Defendant’s response brief, the Defendant “adds language [to the statute] that the legislature did not include.” However, the Court does not specify which words the Defendant presumably attempts to add to the statute.

14. Also, the Court stated that it: “looks to the common sense reading of the statute, the Idaho Driver's Manual, and the legislature's interest in protecting public safety. This Court is persuaded by the public safety argument that the legislature intended drivers on the freeway to use turn signals for longer periods of time. It makes sense that the legislature would require drivers operating on our freeways at higher speeds to signal for longer than drivers ‘in all other instances.’”
15. As strange as this may sound, “common sense” is not the standard for interpreting statutes. When interpreting the meaning of language contained in a statute, *a court must interpret the statute in order to give effect to the legislature's intent and purpose*. *State v. Coleman*, 128 Idaho 466, 469, 915 P.2d 28, 31 (Ct.App.1996) (emphasis added). Besides, the famous French philosopher, Voltaire, correctly observed that “Common sense is not so common.”
16. The Idaho Driver’s Manual is not a legal opinion or decision. It is certainly not persuasive because the actual writer of the manual, and his/her qualifications and/or ability to interpret Idaho statutes, is also unknown.
17. In addition, the record is absent of any evidence or identifiable and reliable information that suggests that “the legislature intended drivers on the freeway to use turn signals for longer periods of time.” In other words, in its decision the Court did not provide any legislative history materials supporting the assertion that the legislature intended for drivers to use turn signals for longer periods while driving on freeways.

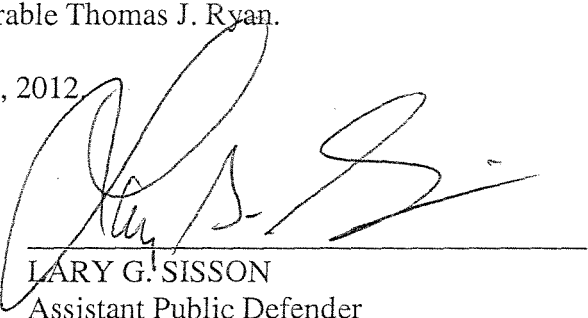
18. It should be noted that the language for using a signal for five seconds was placed in the original statute (which was then 49-664) back in 1950s – at a time when superhighways, freeways, and large-scale interstate highways did not exist. The modern interstate freeway system was first initiated by the Federal Aid Highway Act of 1956.

Defendant reserves the right to supplement this Motion with additional arguments, documents and evidence.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that attorney for Defendant will bring up for hearing the above Motion at the Canyon County District Courthouse, 1115 Albany Street, Caldwell, Idaho, on the 10th day of October, 2012, at the hour of 10:30 a.m. or as soon thereafter as can be heard before the Honorable Thomas J. Ryan.

DATED this 7th day of September, 2012.



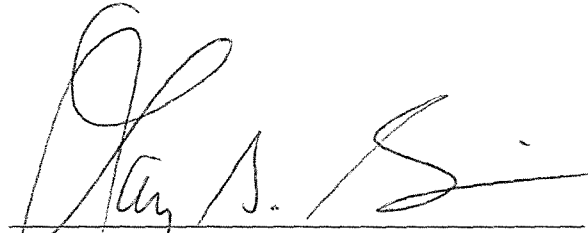
LARRY G. SISSON
Assistant Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of September, 2012, I served a true and correct copy of the within and foregoing document upon the individual(s) named below in the manner noted:

☒ By delivering copies of the same to the courthouse box of the attorney(s) indicated below.

Canyon County Prosecutor's Office
1115 Albany Street
Caldwell, Idaho 83605



LARRY G. SISSON
Assistant Public Defender

SZ

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

FILED
A.M. P.M.

OCT 10 2012

CANYON COUNTY CLERK
M BUSH, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

MATTHEW O BROOKS,

Defendant.

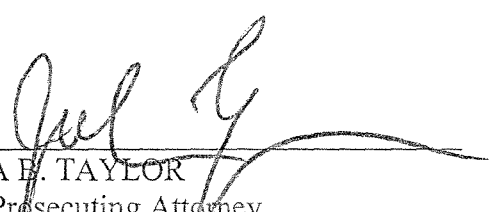
CASE NO. CR2012-12437

**OBJECTION TO MOTION FOR
RECONSIDERATION OF ORDER
DENYING MOTION TO SUPPRESS AND
LEAVE FOR MOTION TO APPEAL**

COMES NOW, JOSHUA B. TAYLOR, Deputy Prosecuting Attorney of the
Canyon County Prosecuting Attorney's Office, on behalf of the State of Idaho, who objects to
the Motion for Reconsideration of Order Denying Motion to Suppress and Leave for Motion to
Appeal filed by the above named Defendant herein.

Further the State rests on its previous briefing of the issue and the Court's
previous ruling on the record.

DATED this 9th day of October, 2012.


JOSHUA B. TAYLOR
Deputy Prosecuting Attorney

**OBJECTION TO MOTION FOR
RECONSIDERATION OF ORDER
DENYING MOTION TO SUPPRESS
AND LEAVE FOR MOTION TO APPEAL 1**

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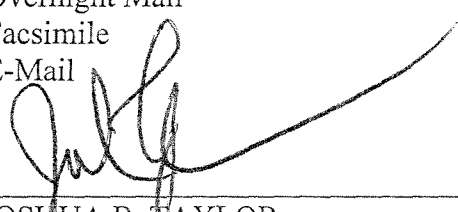
ORIGINAL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 10 day of October, 2012, I caused a true and correct copy of the foregoing instrument to be served upon the attorney for the defendant by the method indicated below and addressed to the following:

Canyon County Public Defender

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☒ Placed in Court Basket
- ☐ Overnight Mail
- ☐ Facsimile
- ☐ E-Mail



JOSHUA B. TAYLOR
Deputy Prosecuting Attorney

OBJECTION TO MOTION FOR
RECONSIDERATION OF ORDER
DENYING MOTION TO SUPPRESS
AND LEAVE FOR MOTION TO APPEAL 2

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **THOMAS J. RYAN** DATE: **OCTOBER 10, 2012**

THE STATE OF IDAHO,)	COURT MINUTE
)	
Plaintiff,)	CASE NO: CR 2012-12437*C
)	CR 2012-12215*C
)	
)	TIME: 10:30 A.M.
vs.)	
)	DCRT4 (1050-1056)
MATTHEW O. BROOKS,)	
)	Court Reporter: Kim Saunders
Defendant.)	
)	

This having been the time heretofore set for **motion hearing** in the above entitled matter, the State was represented by, Mr. Casey Hemmer, Deputy Prosecuting Attorney for Canyon County, Idaho; and the defendant was not present in court, but was represented by counsel, Mr. Lary Sisson.

The Court noted the case and indicated there had been two motions filed; a motion to reconsider the ruling on the motion to suppress and a motion for permission to appeal.

The Court further noted the case had been set for Jury Trial; however, the defendant had failed to appear and therefore, a warrant had been issued and remained

outstanding. Based on the defendant's failure to appear, the Court suggested the motions be addressed after the defendant was taken into custody on the warrant.

Mr. Sisson advised the Court that the defendant resides in Oregon and he was not able to provide the Court with any assurance that he will return to Idaho. He had spoken with the defendant the day the warrant was issued at which time the defendant indicated that he was not satisfied with the representation he was receiving.

The Court inquired if the defendant was intentionally not entering the State of Idaho to avoid arrest.

Mr. Sisson indicated that he didn't believe he was qualified to answer to Courts question.

The Court indicated that it didn't believe the Motion for Permission to Appeal should be addressed until the Motion to Reconsider had been decided. If the Court denied the Motion to Reconsider the foundation would be laid for the Motion for Permission to Appeal.

Mr. Sisson advised the Court that he believed the Motion to Reconsider spoke for itself and there was nothing more he wished to add. As for the Motion for Permission to Appeal, he had filed said motion to be within the time line requirements. However, if the Court wished to take that motion up at a later time, he would have no objection.

The Court indicated that the time line with regard to the Motion for Permission to Appeal would not begin until a ruling had been made on the Motion to Reconsider.

In answer to the Courts inquiry, Mr. Hemmer indicated that Mr. Taylor had filed an objection to the Motion for Reconsideration in which he indicated he would submit on the briefing previously filed on the Motion to Suppress.

Mr. Hemmer further noted his concern regarding the defendants' failure to return to the State of Idaho and didn't believe it was the best use of judicial resources to address these matters now while a warrant was outstanding.

The Court noted Mr. Hemmers concerns and advised each of counsel that it would take the Motion to Reconsider under advisement. It would issue a ruling on the matter and depending on said ruling the Motion for Permission to Appeal could be addressed.



Deputy Clerk

by the U.S. Supreme Court in *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). In *United States v. Leon*, the Court decided to admit evidence despite the insufficiency of the affidavit in support of the warrant. The Idaho State Supreme Court adopted the *Leon* good faith exception in *State v. Prestwich*, 116 Idaho 959, 783 P.2d 298 (1989). Ultimately, the *Guzman* Court rejected the good faith exception as it relates to the warrant process on state constitutional grounds.

ANALYSIS

The only legal issue in dispute is the application of I.C. §49-808(2), which provides:

A signal of intention to turn or move right or left when required shall be given continuously to warn other traffic. **On controlled-access highways and before turning from a parked position, the signal shall be given continuously for not less than five (5) seconds and, in all other instances, for not less than the last one hundred (100) feet traveled by the vehicle before turning.**

(Emphasis added).

The Court summarizes the arguments as follows. The Defense position is that Defendant was only required to use his turn signal for one hundred (100) feet, which he did; therefore, the stop was invalid and the evidence must be suppressed. The State's position is that Defendant was required to use his turn signal for five (5) seconds, which he failed to do; therefore, the stop was valid and the evidence is admissible.

The question before this Court on the Motion to Suppress asked for an interpretation of I.C. §49-808(2). In its decision this Court said, "Here, Trooper Higley was operating on the belief that drivers on Interstate Highway 84 are required to use a turn signal for five (5) seconds before changing lanes. Indeed, this Court and other district courts have interpreted the statute to so require.¹ That is, I.C. §49-808(2) requires that on controlled-access highways the signal shall be given continuously for not less than five (5) seconds." In order to clarify, this Court reads the plain language of I.C. §49-808(2) to require that drivers on controlled access highways must use their turn signal continuously for five (5) seconds before moving right or left.

In its Memorandum Decision, this Court discussed Trooper Higley's good faith belief that

¹ See *State v. Roberto Diaz*, CR 2012-8900*C; See *State v. Michael Luka Iocolucci*, CR 2012-800*C, CR 2012-719*C before the Honorable Molly Huskey.

Defendant had violated I.C. §49-808(2) because he did not use his turn signal for five (5) seconds. Defense counsel uses this discussion to argue that the Court has not followed the precedent established in *State v. Guzman*, *U.S. v. Lopez-Soto*, and *U.S. v. King*.

This Court's decision on its Memorandum Decision on Motion to Suppress is not at odds with *Guzman* or the Ninth Circuit cases. Importantly, *State v. Guzman* addressed the good faith exception as it relates to the sufficiency of a warrant. This is a crucial factual distinction with this case. The *Guzman* Court discussed Article 1, §17 that "no warrant shall issue without probable cause" along with the intention of the exclusionary rule. "We believe that the exclusionary rule should be applied in order to: 1) provide an effective remedy to persons who have been subjected to an unreasonable government search and/or seizure; 2) deter the police from acting unlawfully in obtaining evidence; 3) encourage thoroughness in the warrant issuing process; 4) avoid having the judiciary commit an additional constitutional violation by considering evidence which has been obtained through illegal means; and 5) preserve judicial integrity." *Guzman*, 122 Idaho at 993. The sufficiency of a warrant is not at issue in this case. Furthermore, the above-mentioned goals have been achieved. Because this Court finds that I.C. §49-808(2) required Defendant to use his turn signal for five (5) seconds, the stop and subsequent search (under the plain view exception as stipulated to by the parties) were reasonable and Trooper Higley was acting lawfully.

The Ninth Circuit cases are also distinguishable. In *U.S. v. Lopez-Soto*, the Court said that the Officer was in error and had incorrectly interpreted the statute at issue. The Court said, "Officer Hill stopped Lopez-Soto because he had been instructed that the absence of a vehicle registration sticker from the rear provided a reasonable basis for suspicion of a Baja California code violation. That police academy training, however, was in error. In fact, the applicable Baja California code section directs that the sticker be displayed on the windshield." *U.S. v. Lopez-Soto*, 205F.3d at 1104. Again, determining that the officer was mistaken as to the law, the *U.S. v. King* Court found that the defendant had not violated the law. The Court said that the officer was mistaken that driving with a parking placard hanging from the rearview mirror violated the traffic ordinance. The Court went through a plain language interpretation of the statute, Anchorage Municipal Code §9.36.040(D), to show that the code prohibited such a parking placard on the windshield, but not the review mirror. *U.S. v. King*, 244 F.3d 736, 739-40.

While this Court's Memorandum Decision did discuss a hypothetical scenario in which Trooper Higley had made a mistake, Trooper Higley was not mistaken. He correctly interpreted the law; I.C. §49-808(2) requires drivers on controlled-access highways to use their turn signal for five (5) seconds. Only if an Appellate Court determines that I.C. §49-808(2) requires otherwise would the discussion of a mistake of fact or mistake of law apply. But this discussion is merely dictum.

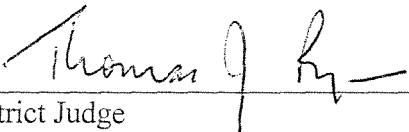
Defendant raises other issues in his Motion to Reconsider but because of the Court's plain language interpretation of the statute, those points become moot.

Therefore,

ORDER

IT IS HEREBY ORDERED that Defendant's Motion to Reconsider Order Denying Motion to Suppress is DENIED.

Dated this 15th day of October, 2012.



District Judge
Thomas J. Ryan

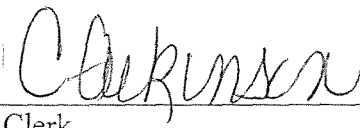
CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be served upon the following via U.S. Mail, postage prepaid, facsimile transmission or by hand delivery:

BRYAN F. TAYLOR
JOSH TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
1115 Albany St.
Caldwell, ID 83605

MARK MIMURA
LARY SISSON
CANYON COUNTY PUBLIC DEFENDER
510 Arthur St.
Caldwell, ID 83605

10 / 16 / 12
Date


Deputy Clerk

CANYON COUNTY CLERK
C ATKINSON, DEPUTY

ANALYSIS

Idaho Appellate Rule 12 governs permissive appeal. IAR 12(a) sets forth the grounds for permissive appeal. "Permission may be granted . . . to appeal from an interlocutory order of a district court . . . which is not otherwise appealable under these rules, but which involves a controlling question of law as to which there is substantial grounds for difference of opinion and in which an immediate appeal from the order or decree may materially advance the orderly resolution of the litigation." The Defendant seeks to appeal the Court's ruling on the issue of suppression, an interlocutory order. *State v. Young*, 136 Idaho 113, 29 P.3d 949 (2001).

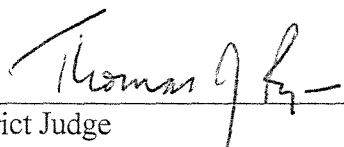
Importantly, permissive appeal is only accepted "in the most exceptional cases, with the intent to resolve 'substantial legal issues of great public interest or legal questions of first impression.'" *Aardema v. U.S. Dairy Sys.*, 147 Idaho 785, 789, 215 P.3d 505, 509 (2009); citing *Budell v. Todd*, 105 Idaho 2, 4, 665 P.2d 701, 703 (1983) (*per curiam*). Also, the Court should consider whether the resolution of the suppression issue would be "of practical importance in the administration of the criminal justice system." *State v. Bicknell*, 140 Idaho 201, 203, 91 P.3d 1105, 1107 (2004). This case was set for a jury trial, and Defendant failed to appear. Defense counsel argues that allowing permissive appeal would be a good use of time until Defendant actually appears in Idaho for a trial. The Court finds this argument unpersuasive. For instance, if the Court grants this motion and the appeal accepted by the appellate court, and the Defendant is arrested shortly thereafter, he may be in jail a significant amount of time while the appeal progressed. It appears to this Court that it is best for the administration of the criminal justice system in this case to allow it to proceed to trial following arrest of the Defendant and once the case is adjudicated, an appeal can be taken if so desired by the Defendant.

Therefore,

ORDER

IT IS HEREBY ORDERED that Defendant's Motion for Permission to Appeal is DENIED.

Dated this 13th day of November, 2012.



District Judge
Thomas J. Ryan

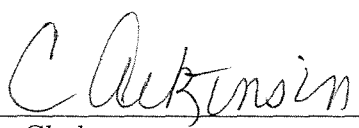
CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be served upon the following via U.S. Mail, postage prepaid, facsimile transmission or by hand delivery:

BRYAN F. TAYLOR
JOSH TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
1115 Albany St.
Caldwell, ID 83605

MARK MIMURA
LARY SISSON
CANYON COUNTY PUBLIC DEFENDER
510 Arthur St.
Caldwell, ID 83605

11 / 19 / 12
Date



Deputy Clerk

FILED
A.M. P.M.

FEB 11 2013

CANYON COUNTY CLERK
CATKINSON, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,

Plaintiff,

vs.

Matthew O Brooks

Defendant.

Case No. CR-2012-12437*C
CR-2012-12215*C

FELONY BENCH WARRANT
OF ARREST

TO ANY SHERIFF, CONSTABLE, MARSHAL, POLICEMEN, OR PEACE OFFICER IN
THE STATE OF IDAHO:

The Court having this date entered it's Order for the issuance of a Bench Warrant
for the arrest of the above named defendant for failure to appear in Court as heretofore
Ordered by this Court, and the defendant having previously been charged with
Possession of a Controlled Substance
in violation of Idaho Code Section(s) 37-2732(c)(1),
a felony. 4. Possession of Drug Paraphernalia 37-2734A(1)-misd.

YOU ARE HEREBY COMMANDED forthwith to arrest the above named
defendant and bring said defendant before the undersigned District Court Judge, or if
said Judge is unavailable, then before the nearest available Magistrate. This Warrant
may be served at any time during the hours of day or night.

BENCH WARRANT [FELONY]

DOCKETED

000124

Hillsborn Dro 2/9/13

After considering the facts pertaining to the defendant and the crime, the bail is set in the amount of 50,000⁰⁰.

Dated this 25th day of September, 2012

[Signature]
District Judge

Race: _____

Hair: Brown

Eyes: Brown

Height: 5'02

Weight: 120 pounds

DOB: [REDACTED]

SSN: [REDACTED]

Other: _____

Agency: _____

Prosecutor: Canyon County Prosecutor

RETURN

STATE OF IDAHO)
County of Canyon) ss.

I HEREBY CERTIFY that I received this Warrant on _____

and served the said Warrant by arresting the within named defendant

_____ on _____.

(Name)

(Title)

BENCH WARRANT [FELONY]

000125

THIRD JUDICIAL DISTRICT, STATE OF IDAHO
COUNTY OF CANYON

☒ ARRAIGNMENT ☒ IN-CUSTODY ☐ SENTENCING / CHANGE OF PLEA

STATE OF IDAHO,

Plaintiff

-vs-

MATTHEW BROOKS

Defendant.

☐ True Name
Corrected Name:

Case No. CR-2012-12437-C; CR-2012-12215-C

Date: 2/21/2013

Judge: SCHILLER

Recording: MAG 7 (140-143)

APPEARANCES:

☒ Defendant
☐ Defendant's Attorney

☒ Prosecutor Kimberlee Bratcher
☐ Interpreter

☐ **FAILURE TO APPEAR:** Defendant failed to appear. It is Ordered:

☐ bench warrant issued
☐ bail forfeited

☐ bail on warrant \$
☐ referred to PA

ADVISEMENT OF RIGHTS: Defendant

- ☒ was informed of the charges against him/her and all legal rights, including the right to be represented by counsel.
☒ requested court appointed counsel. ☐ waived right to counsel.
☒ indigency hearing held. ☐ Court denied court-appointed counsel.
☒ Court appointed public defender.

☒ District Court Arraignment: March 1, 2013 at 9:00 am

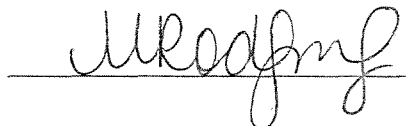
before Judge Huskey

BAIL: State recommends

☐ Released on written citation promise to appear
☐ Released on own recognizance (O.R.)
☐ Released to pre-trial release officer.
☐ No Contact Order ☐ entered ☐ continued
☐ Address Verified

☐ Released on bond previously posted.
☒ Remanded to the custody of the sheriff.
☒ Bail set at \$50,000 total continued
☒ Continued Consolidated
☐ Corrected Address _____

OTHER: _____

 Deputy Clerk

THIRD JUDICIAL DISTRICT
STATE OF IDAHO
COUNTY OF CANYON

FILED 2/21/13 AT 130P .M.
CLERK OF THE DISTRICT COURT
BY [Signature] Deputy

THE STATE OF IDAHO/or

Case No.

ORDER APPOINTING PUBLIC
DEFENDER

The Court being fully advised as to the application of the above-named applicant and it appearing to
be a proper case,

IT IS HEREBY ORDERED that the Canyon County Public Defender be, and hereby is, appointed for

☒ THE MATTER IS SET FOR

before Judge

☐ THE MATTER SHALL BE SET FOR

before Judge

Dated:

Signed:

Judge

☒ In Custody -- Bond \$

☐ Released:

☐ O.R.

☐ on bond previously posted

☐ to PreTrial Release

Juvenile: ☐ In Custody

☐ Released to

☐ No Contact Order entered.

☒ Cases consolidated. (cont'd)

☐ Discovery provided by State.

☐ Interpreter required.

☐ Additional charge of FTA.

Original--Court File

Yellow--Public Defender

Pink--Prosecuting Attorney

ORDER APPOINTING PUBLIC
DEFENDER

000127

2/06

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **DENNIS E. GOFF** DATE: **MARCH 1, 2013**

THE STATE OF IDAHO,)	COURT MINUTES
)	
Plaintiff,)	CASE NO. CR2012-12437-C
)	CR2012-12215-C
)	
vs)	TIME: 9:00 A.M.
)	
MATTHEW O. BROOKS,)	DCRT5 (1208-1210)
)	
Defendant,)	REPORTED BY: Laura Whiting
)	

This having been the time heretofore set for **arraignment** in the above entitled matters, the State was represented by Ms. Lisa Donnell, Deputy Prosecuting Attorney for Canyon County, and the defendant appeared in court with counsel, Mr. Lary Sisson.

The Court called the case and noted a motion for an interlocutory appeal had been denied as well as a motion to reconsider, therefore, this matter needed to be set for a jury trial.

The Court set this matter for jury trial commencing on the 23rd day of April, 2013 at 8:30 a.m. before Judge Morfitt.

The defendant was instructed to remain in contact with his attorney and was remanded into the custody of the Canyon County Sheriff pending further proceeding or posting of bond.



Deputy Clerk

F I LLED
A.M. P.M.

MAR 12 2013

CANYON COUNTY CLERK
R BERRY, DEPUTY

Robyn Fyffe, ISB #7063
NEVIN, BENJAMIN, McKAY & BARTLETT, LLP
303 W. Bannock
P.O. Box 2772
Boise, ID 83701
Telephone: 208-343-1000
Facsimile: 208-345-8274
Email: rfyffe@nbmlaw.com

Attorneys for Two Jinn, Inc. dba Aladdin Bail Bonds/Anytime Bail Bonds

IN THE DISTRICT COURT FOR THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,)
)
Plaintiff,))
)
vs.)
)
MATTHEW O BROOKS,)
)
Defendant,))
)
and)
)
ALADDIN BAIL BONDS as agent for)
DANIELSON NATIONAL INSURANCE)
COMPANY,)
)
Surety/Real-Party in Interest.)
_____)

Case No.: CR-2012-12437-C
Bond No.: DN25-2767140
Bond Amount: \$25,000.00

**MOTION TO SET ASIDE
FORFEITURE AND
EXONERATE BOND AND
CONDITIONAL REQUEST
FOR HEARING**

Two Jinn, Inc., by and through its counsel of record, Robyn Fyffe, hereby moves this Court, pursuant to I.C. §19-2922(5) to set aside the September 25, 2012 forfeiture and exonerate this bond in the above-referenced case. This Motion is based upon the fact that the Defendant appeared in Court on February 21, 2013 and March 1, 2013 to be arraigned, which dates are prior to the 180th day after the forfeiture of the above-mentioned bond. See Court ROA.

- 1 • MOTION TO SET ASIDE FORFEITURE AND EXONERATE BOND AND
CONDITIONAL REQUEST FOR HEARING

000129

ORIGINAL


The Court shall exonerate the bond when a defendant appears before the court within 180 days of the forfeiture. I.C. § 19-2922(5). On February 21, 2013 and March 1, 2013, the Defendant appeared before the Court and was arraigned. The 180th day after the court forfeited this bond will be March 24, 2013 and the Court should therefore exonerate the bond based on the Defendant's February 21, 2013 and March 1, 2013 appearances.

Although the Court can condition the exoneration of the bond pursuant to I.C. § 19-2922(5) on the bail agent's payment of transportation costs, it appears that neither the prosecuting attorney nor state or local law enforcement are requesting reimbursement for any transportation costs in this case. Idaho Criminal Rule 46(k)(1) provides that transportation "costs shall be determined by the court following filing within fourteen (14) days of the defendants return, by either the prosecuting attorney or a representative of the state or local law enforcement entity, of documentation of the costs actually incurred." The fourteenth day after the Defendant first appeared in Court was March 7, 2013 and no request for costs pursuant to I.C.R. 46(k)(1) has been filed. *See* Court ROA. Aladdin thus assumes no transportation costs are being requested.

Accordingly, the Court should set aside the September 25, 2012 forfeiture and exonerate this bond. Should the Court, for any reason, determine that this Motion should be denied, it is respectfully requested that the Court set this matter for a hearing at a mutually convenient date and time. *See* attached unavailable dates for Robyn Fyffe through June, 2013.

DATED this 12 day of March, 2013.

NEVIN, BENJAMIN, MCKAY & BARTLETT LLP



Robyn Fyffe

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of March, 2013, I caused to be served a true and correct copy of the foregoing by the following method to:

Canyon County Prosecutor
1115 Albany Street
Caldwell, Idaho 83605

☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☒ Court House Basket
☐ Certified Mail, Return Receipt Requested
☐ Overnight Mail
☐ Facsimile: 208-454-7474

Canyon County Public Defender
510 Arthur Street
Caldwell, Idaho 83605

☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☒ Court House Basket
☐ Certified Mail, Return Receipt Requested
☐ Overnight Mail
☐ Facsimile: 208-639-4611



Heather Price

Case Number Result Page

Canyon

1 Cases Found.

State of Idaho vs. Matthew O Brooks				
Next hearing scheduled: 04/23/2013 8:30 AM				
Case: CR-2012-0012437-C	District Judge: Thomas J Ryan		Amount due: \$0.00	Pending
Charges: Violation Date Charge		Citation Degree Disposition		
05/12/2012 I37-2732(C)(1)		Felony		
Controlled Substance-Possession of Officer: CC Sheriff's Office,, CCSO				
Pending hearings:	Date/Time	Judge	Hearing Type	
	04/23/2013 8:30 AM	James C. Morfitt	Jury Trial	
Register of actions:	Date			
	05/14/2012	New Case Filed-Felony		
	05/14/2012	Affidavit Of Probable Cause		
	05/14/2012	Criminal Complaint		
	05/14/2012	Hearing Scheduled (Arraignment (In Custody) 05/14/2012 01:32 PM)		
	05/14/2012	Hearing result for Arraignment (In Custody) scheduled on 05/14/2012 01:32 PM: Hearing Held		
	05/14/2012	Hearing result for Arraignment (In Custody) scheduled on 05/14/2012 01:32 PM: Arraignment / First Appearance		
	05/14/2012	Hearing result for Arraignment (In Custody) scheduled on 05/14/2012 01:32 PM: Constitutional Rights Warning		
	05/14/2012	Hearing result for Arraignment (In Custody) scheduled on 05/14/2012 01:32 PM: Order Appointing Public Defender		
	05/14/2012	Hearing result for Arraignment (In Custody) scheduled on 05/14/2012 01:32 PM: Consolidation Of Files w/CR2012-12215*C		
	05/14/2012	Hearing result for Arraignment (In Custody) scheduled on 05/14/2012 01:32 PM: Commitment On Bond/\$25,000.00		
	05/14/2012	Change Assigned Judge		
	05/14/2012	Hearing Scheduled (Preliminary Hearing 05/24/2012 08:30 AM)		
	05/15/2012	Bond Posted - Surety (Amount 25000.00)		
	05/15/2012	Notice of Bond Posted		
	05/15/2012	PA's Response For Request For Discovery		
	05/15/2012	Request For Discovery		
	05/15/2012	Demand For Notice Of Defense Of Alibi		
	05/16/2012	Waiver Of Extradition		
	05/24/2012	Hearing result for Preliminary Hearing scheduled on 05/24/2012 08:30 AM: Hearing Held		
	05/24/2012	Hearing result for Preliminary Hearing scheduled on 05/24/2012 08:30 AM: Preliminary Hearing Waived (bound Over)		
	05/24/2012	Hearing result for Preliminary Hearing scheduled on 05/24/2012 08:30 AM: Order Binding Defendant Over to District Court		

000132

05/24/2012 Hearing Scheduled (Arrn. - District Court 06/01/2012 09:00 AM)
05/24/2012 Information
06/01/2012 District Court Hearing Held Court Reporter: Laura Whiting Number of
Transcript Pages for this hearing estimated: less than 100 pages
Hearing result for Arrn. - District Court scheduled on 06/01/2012
06/01/2012 09:03 AM: Hearing Held RYAN-PT-AUG 27@1:30-RYAN-JT-SEPT 25-
27@9:00-MORFITT
Hearing result for Arrn. - District Court scheduled on 06/01/2012
06/01/2012 09:03 AM: Arraignment / First Appearance RYAN-PT-AUG 27@1:30-
RYAN-JT-SEPT 25-27@9:00-MORFITT
Hearing result for Arrn. - District Court scheduled on 06/01/2012
06/01/2012 09:03 AM: Appear & Plead Not Guilty RYAN-PT-AUG 27@1:30-RYAN-
JT-SEPT 25-27@9:00-MORFITT
06/01/2012 Hearing Scheduled (Pre Trial 08/27/2012 01:30 PM)
06/01/2012 Hearing Scheduled (Jury Trial 09/25/2012 09:00 AM)
06/01/2012 Notice Of Hearing
06/05/2012 Request For Discovery
06/29/2012 Motion to Suppress
06/29/2012 Memorandum of Law In Support of Motion To Suppress
06/29/2012 Notice Of Hearing
06/29/2012 Hearing Scheduled (Motion Hearing 07/23/2012 02:00 PM) Motion to
Suppress
07/23/2012 Hearing result for Motion Hearing scheduled on 07/23/2012 02:00
PM: Continued Motion to Suppress
Hearing result for Motion Hearing scheduled on 07/23/2012 02:00
07/23/2012 PM: District Court Hearing Held Court Reporter: Kim Saunders
Number of Transcript Pages for this hearing estimated: less than 100
07/23/2012 Hearing Scheduled (Motion Hearing 08/16/2012 01:30 PM) to
suppress
08/02/2012 Pa's First Supplemental Response to Request for Discovery
08/09/2012 Pa's Second Supplemental Response to Request for Discovery
08/14/2012 Objection To Motion To Suppress Evidence
08/15/2012 papers/Notice and Demand For Abatement
08/16/2012 Hearing result for Pre Trial scheduled on 08/27/2012 01:30 PM:
Hearing Vacated
08/16/2012 Hearing result for Motion Hearing scheduled on 08/16/2012 01:30
PM: Hearing Held to suppress - 14 days for additional briefing
Hearing result for Motion Hearing scheduled on 08/16/2012 01:30
08/16/2012 PM: District Court Hearing Held Court Reporter: Kim Saunders
Number of Transcript Pages for this hearing estimated: less than 100
08/16/2012 Hearing Scheduled (Pre Trial 09/18/2012 01:30 PM)
08/24/2012 Pa's Third Supplemental Response to Request for Discovery
08/29/2012 Defendant's Supplemental Brief In Support Of Motion To Suppress
08/30/2012 Motion To Appear Telephonically At Pre-Trial Conference
08/31/2012 Order allowing def to appear telephonically at PT conference
08/31/2012 Hearing result for Pre Trial scheduled on 09/18/2012 01:30 PM:
Hearing Vacated
08/31/2012 Hearing Scheduled (Pre Trial 09/18/2012 03:00 PM) Def to appear
Telephonically
09/04/2012 Objection to motion to suppress evidence
09/10/2012 Order to Provide Auto Recording without Cost
09/17/2012 Response to State's Objection to Motion to Suppress

000133

09/18/2012 Hearing result for Pre Trial scheduled on 09/18/2012 03:00 PM:
Hearing Held Def to appear Telephonically
Hearing result for Pre Trial scheduled on 09/18/2012 03:00 PM:
09/18/2012 District Court Hearing Held Court Reporter: Kim Saunders Number of
Transcript Pages for this hearing estimated: less than 100
09/19/2012 Memorandum decision upon motion to suppress
09/21/2012 Pa's Fourth Supplemental Response to Request for Discovery
09/21/2012 Motion To Shorten Time For Hearing And Notice Of Hearing
09/21/2012 Motion To Continue JT And Notice Of Hearing
09/21/2012 Hearing Scheduled (Motion Hearing 09/24/2012 09:00 AM) motion to
shorten time, motion to continue
Hearing result for Motion Hearing scheduled on 09/24/2012 09:00
09/24/2012 AM: District Court Hearing Held Court Reporter: Carole Bull Number
of Transcript Pages for this hearing estimated: less than 100 pages
motion to shorten time, motion to continue
09/24/2012 Hearing result for Motion Hearing scheduled on 09/24/2012 09:00
AM: Hearing Held motion to shorten time, motion to continue
09/24/2012 Hearing result for Motion Hearing scheduled on 09/24/2012 09:00
AM: Continued motion to shorten time, motion to continue
Hearing result for Jury Trial scheduled on 09/25/2012 09:00 AM:
09/25/2012 District Court Hearing Held Court Reporter: Debora Kreidler Number
of Transcript Pages for this hearing estimated: less than 100 pages
State's Mo to Shorten Time / to Continue
Hearing result for Jury Trial scheduled on 09/25/2012 09:00 AM:
09/25/2012 Failure To Appear For Hearing Or Trial State's Mo to Shorten Time /
to Continue
09/25/2012 Notice of Bond Forfeiture
09/25/2012 Warrant Issued - Bench Bond amount: 50000.00 Failure to Appear-
total bond with CR-2012-12215*C Defendant: Brooks, Matthew O
09/25/2012 Case Status Changed: Inactive
09/27/2012 Motion to reconside order denying motion to suppress
09/27/2012 Motion for permission to appeal
09/27/2012 Case Status Changed: Reopened
09/27/2012 Hearing Scheduled (Motion Hearing 10/10/2012 10:30 AM) Motn for
Permission to Appeal/ Motn to Reconsider
Hearing result for Motion Hearing scheduled on 10/10/2012 10:30
10/10/2012 AM: District Court Hearing Held Court Reporter: Kim Saunders
Number of Transcript Pages for this hearing estimated: less than 100
pages
10/10/2012 Hearing result for Motion Hearing scheduled on 10/10/2012 10:30
AM: Hearing Held Motn for Permission to Appeal/ Motn to Reconsider
10/10/2012 Motion Held - Motn to Reconsider
10/10/2012 motion to reconsider taken under advisement-court to issue written
ruling
10/10/2012 Objection to Motion for Reconsideration of Order Denying Motion to
Supress & Leave for Motion to Appeal
10/16/2012 Order Denying Motion to Reconsider
11/19/2012 Order Denying Motion For Permission to Appeal
02/11/2013 Warrant Returned Failure to Appear-total bond with CR-2012-
12215*C Defendant: Brooks, Matthew O/ served in Hillsboro Oregon
02/11/2013 Inactive
02/11/2013 Case Status Changed: Inactive
02/21/2013 status changed to Active

000134

02/21/2013 Case Status Changed: Pending
02/21/2013 Hearing Scheduled (Arraignment (In Custody) 02/21/2013 01:30 PM)
02/21/2013 Hearing Scheduled (Arraignment (In Custody) 02/21/2013 01:30 PM)
02/21/2013 Hearing result for Arraignment (In Custody) scheduled on 02/21/2013 01:30 PM: Hearing Held
02/21/2013 Hearing result for Arraignment (In Custody) scheduled on 02/21/2013 01:30 PM: Arraignment / First Appearance
02/21/2013 Hearing result for Arraignment (In Custody) scheduled on 02/21/2013 01:30 PM: Order Appointing Public Defender
02/21/2013 Hearing Scheduled (Arrn. - District Court 03/01/2013 09:00 AM)
Hearing result for Arrn. - District Court scheduled on 03/01/2013
03/01/2013 09:07 AM: Hearing Held RYAN-FTA-JURY TRIAL JT-MARCH 508@8:30-MORFITT JT-APRIL 23-26@8:30-MORFITT
03/01/2013 Hearing Scheduled (Jury Trial 04/23/2013 08:30 AM)
03/01/2013 District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: less than 100
03/01/2013 Notice Of Hearing
03/04/2013 PD-Request For Discovery

Connection: Public

000135

Robyn Fyffe

2013

JANUARY						
SUN	MON	TUE	WED	THU	FRI	SAT
		X	X	X	X	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	X	X	23	24	X	26
27	28	29	30	31		

FEBRUARY						
SUN	MON	TUE	WED	THU	FRI	SAT
					X	2
3	X	5	6	X	8	9
10	X	X	X	X	15	16
17	18	19	20	21	X	23
24	X	26	X	28		

MARCH						
SUN	MON	TUE	WED	THU	FRI	SAT
					X	2
3	X	X	6	7	X	9
10	11	12	13	X	15	16
17	18	X	20	X	22	23
24	25	X	27	28	X	30
31						

APRIL						
SUN	MON	TUE	WED	THU	FRI	SAT
	1	2	3	4	X	6
7	8	9	X	11	X	13
14	15	X	17	18	19	20
21	22	23	24	X	26	27
28	29	30				

MAY						
SUN	MON	TUE	WED	THU	FRI	SAT
			1	2	3	4
5	6	7	8	9	10	11
12	13	X	15	16	17	18
19	20	21	22	X	24	25
26	27	28	29	X	31	

JUNE						
SUN	MON	TUE	WED	THU	FRI	SAT
						1
2	X	X	X	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

JULY						
SUN	MON	TUE	WED	THU	FRI	SAT
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

AUGUST						
SUN	MON	TUE	WED	THU	FRI	SAT
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

SEPTEMBER						
SUN	MON	TUE	WED	THU	FRI	SAT
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

OCTOBER						
SUN	MON	TUE	WED	THU	FRI	SAT
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

NOVEMBER						
SUN	MON	TUE	WED	THU	FRI	SAT
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

DECEMBER						
SUN	MON	TUE	WED	THU	FRI	SAT
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

IN THE DISTRICT COURT OF THE THIRD JUCICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **RENAE J. HOFF** DATE: **MARCH 15, 2013**

THE STATE OF IDAHO,)	COURT MINUTES
)	
Plaintiff,)	CASE NO. CR-2012-12437*C
)	CR-2012-12215*C
)	
vs)	TIME 1:30 P.M.
)	
MATTHEW O. BROOKS,)	REPORTED BY: Kathy Klemetson
)	
Defendant.)	DCRT 5 (201-214)
)	

This having been the time heretofore set for **Change of Plea Hearing** in the above entitled matters, the State was represented by Mr. Gearld Wolff, Deputy Prosecuting Attorney for Canyon County, Idaho, and the defendant was present in court, represented by counsel, Mr. Lary Sisson.

The Court called the case, reviewed the pending charges and inquired.

In answer to the Court's inquiry, Mr. Sisson advised that the cases were resolved, whereby the defendant would plead guilty to the felony offense of Possession of a Controlled Substance in CR-2012-12437*C, the consolidated misdemeanor offenses in CR-2012-12215*C would be dismissed and the defendant would be released to pretrial release services pending sentencing. Further, Mr. Sisson advised that as long as the defendant had no prior felony offenses, the State would recommend probation. Mr. Sisson reviewed the

previous Motion to Suppress that had been denied, advised that the plea of guilty in this case would be conditional and the defendant would be appealing the Motion to Suppress.

Mr. Wolff concurred.

The defendant concurred and was sworn in by the clerk.

Mr. Sisson submitted a Guilty Plea Advisory Form.

The Court examined the defendant, determined the defendant read and understood the English language, had attended school through the eighth grade and was twenty-seven (27) years of age. Further, the Court determined that this was the defendant's first felony offense, determined the defendant recalled the maximum possible penalty and determined the defendant had not consumed any medication within the past twenty-four (24) hours. The Court determined the defendant had no mental conditions, determined the defendant had never attended substance abuse treatment and determined the defendant was not under the influence of any intoxicating substances.

The Court reviewed the previous Motion to Suppress, noted that the defendant would be appealing the decision on the Motion to Suppress and advised that if the defendant's appeal was granted, he could come back and re-address this case. The Court further advised that the defendant was pleading guilty to a felony offense, determined the defendant had decided to plead guilty two (2) weeks previously and noted that the Court had previously denied the Motion for Permissive Appeal.

The Court reviewed the charge of Possession of a Controlled Substance, determined that laboratory testing had been completed on the substance and advised the defendant that he could be ordered to pay restitution for said testing.

Mr. Sisson advised that he had explained the defendant that he would be ordered to pay restitution, advised that the defendant was well aware of the facts in this case and advised that there was a factual basis for a plea of guilty. Further, Mr. Sisson advised that the defendant made incriminating statements at the time of the arrest.

The Court advised the defendant that if he was not a citizen of the United States and pled guilty, or was found guilty of any criminal offense, it could have immigration consequences to include, deportation from the United States, inability to obtain legal status in the United States, or denial of an application for United States citizenship.

The Court advised the defendant that by entering a plea of guilty in this case, he would be waiving his right to remain silent, he would be waiving his right to subpoena witnesses on his own behalf, examined the defendant and determined there had been no promises or threats and advised the defendant that by entering a plea of guilty, he would be waiving his right to remain silent.

The Court examined the defendant and determined that he had not been diagnosed with a mental illness.

The Court examined the defendant and in answer to the Court's inquiry, the **defendant entered a plea of guilty to the felony offense of Possession of a Controlled Substance.**

The Court examined the defendant and in answer to the Court's inquiry, the defendant advised of his Oregon address.

The Court inquired if the defendant could be supervised by pretrial release when he resided in another state.

In answer to the Court's inquiry, Mr. Wolff advised that pretrial release could supervise the defendant in Oregon.

The Court advised the defendant that he would need to arrange transportation to complete his Presentence Investigation Report, advised the defendant of the importance of the Presentence Investigation Report and inquired.

In answer to the Court's inquiry, Mr. Wolff advised that the office for pretrial release was open until 5:00 p.m. on this date.

The Court advised that the offices for District III Probation and Parole was closed until the following Monday.

Mr. Sisson advised the Court that the defendant had children residing in the area and advised that he could stay with them.

A woman in the audience advised that the defendant would not be permitted to live at the house with their children.

The Court expressed opinions.

Mr. Sisson made responding statements.

The Court advised the defendant that he would be ordered released to pretrial release services at 8:00 a.m. on Monday, March 18, 2013 and ordered the defendant to immediately report to Pretrial Release Services and District III Probation and Parole to

schedule his appointment for the Presentence Investigation Report. The Court **ordered a Presentence Investigation Report** be prepared in this matter and set this matter for **Sentencing on May 6, 2013 at 2:15 p.m. before Judge Ryan.**

Mr. Sisson requested the Court order a 19-2524 Substance Abuse Assessment as well.

The Court **ordered a 19-2524 Substance Abuse Assessment** to be completed as well.

The defendant was remanded to the custody of the Canyon County Sheriff, to be released to pretrial release services on March 18, 2013 at 8:00 a.m.



Deputy Clerk

FILED
A.M. P.M.

MAR 15 2013

CANYON COUNTY CLERK
M POLLARD, DEPUTY

GUILTY PLEA ADVISORY

Defendant's Name: MATTHEW BROOKS

Date: _____ Case No. CR-2012-12437-C

Nature of Charge(s): _____ Minimum & Maximum Possible Penalty: _____

Possession of a Controlled imprisoned for not more than 7 years, or
Substance (Methamphetamine) fined not more than \$15,000, or both; 100
hours of community service.

STATEMENT OF RIGHTS & EXPLANATION OF WAIVERS BY PLEA OF GUILTY
(PLEASE INITIAL EACH RESPONSE)

1. You have the right to remain silent. You do not have to say anything about the crime(s) you are accused of committing. If you elected to have a trial, the state could not call you as a witness or ask you any questions. However, anything you do say can be used as evidence against you in court.

I understand that by pleading guilty I am waiving my right to remain silent before and during trial. MB

2. The waiver of your right to remain silent only applies to your plea of guilty to the crime(s) in this case. Even after pleading guilty, you will still have the right to refuse to answer any question or to provide any information that might tend to show you committed some other crime(s). You can also refuse to answer or provide any information that might tend to increase the punishment for the crime(s) to which you are pleading guilty.

I understand that by pleading guilty to the crime(s) in this case, I still have the right to remain silent with respect to any other crime(s) and with respect to answering questions or providing information that may increase my sentence. MB

3. You have the right to be represented by an attorney. If you want an attorney and cannot pay for one, you can ask the judge for an attorney who will be paid by the county. MB

4. You are presumed to be innocent. You would be found guilty if: 1) you plead guilty in front of the judge, or 2) you are found guilty at a jury trial.

I understand that by pleading guilty I am waiving my right to be presumed innocent. MB.

5. You have the right to a speedy and public jury trial. A jury trial is a court hearing to determine whether you are guilty or not guilty of the charge(s) brought against you. In a jury trial, you have the right to present evidence in your defense and to testify in your own defense. The state must convince each and every one of the jurors of your guilt beyond a reasonable doubt.

I understand that by pleading guilty I am waiving my right to a speedy and public jury trial. MB.

6. You have the right to confront the witnesses against you. This occurs during a jury trial where the state must prove its case by calling witnesses to testify under oath in front of you, the jury, and your attorney. Your attorney could then cross-examine (question) each witness. You could also call your own witnesses of your choosing to testify concerning your guilt or innocence. If you do not have the funds to bring those witnesses to court, the state will pay the cost of bringing your witnesses to court.

I understand that by pleading guilty I am waiving my right to confront the witnesses against me, and present witnesses and evidence in my defense.
MB.

QUESTIONS REGARDING PLEA

(Please answer every question. If you do not understand a question consult your attorney before answering.)

PLEASE CIRCLE ONE

1. Do you read and write the English language?
If not, have you been provided with an interpreter to help you fill out this form?

YES NO
YES NO

2. What is your age? 27.

3. What is your true and legal name? Matthew Oliver Brooks.

4. What was the highest grade you completed? 8th.

If you did not complete high school, have you received

either a general education diploma or high school equivalency diploma?

YES

☒ NO

5. Are you currently under the care of a mental health professional?

YES

☒ NO

6. Have you ever been diagnosed with a mental health disorder?

YES

☒ NO

If so, what was the diagnosis and when was it made? _____

7. Are you currently prescribed any medication?

YES

☒ NO

If so, have you taken your prescription medication during the past 24 hours?

YES

NO

8. In the last 24 hours, have you taken any medications or drugs, or drank any alcoholic beverages which you believe affect your ability to make a reasoned and informed decision in this case?

YES

☒ NO

9. Is there any other reason that you would be unable to make a reasoned and informed decision in this case?

YES

☒ NO

10. Is your guilty plea the result of a plea agreement?

☒ YES

NO

If so, what are the terms of that plea agreement?
(If available, a written plea agreement should be attached hereto as "Addendum 'A'")

If Defendant pleads guilty to felony Possession of a Controlled Substance, then the State agrees to dismiss all other charges, release defendant to pre-trial release services and recommend probation. Defendant is also allowed to enter a conditional guilty plea so he can appeal the denial of his Motion to Suppress.

11. There are two types of plea agreements. Please initial the one paragraph below which describes the type of plea you are entering:

- a. I understand that my plea agreement is a binding plea agreement. This means that if the district court does not impose the specific sentence as recommended by both parties, I will be allowed to withdraw my plea of guilty and proceed to a jury trial. _____.

b. I understand that my plea agreement is a non-binding plea agreement. This means that the court is not bound by the agreement or any sentencing recommendations, and may impose any sentence authorized by law, including the maximum sentence stated above. Because the court is not bound by the agreement, if the district court chooses not to follow the agreement, I will not have the right to withdraw my guilty plea. MB.

12. As a term of your plea agreement, are you pleading guilty to more than one crime?

YES

☒ NO

If so, do you understand that your sentences for each crime could be ordered to be served either concurrently (at the same time) or consecutively (one after the other)?

YES

NO

13. Is this a conditional guilty plea in which you are reserving your right to appeal any pre-trial issues?

☒ YES

NO

If so, what issue are you reserving the right to appeal?

The Court's denial of Defendant's Motion to Suppress.

14. Have you waived your right to appeal your judgment of conviction and sentence as part of your plea agreement?

YES

☒ NO

15. Have any other promises been made to you which have influenced your decision to plead guilty?

YES

☒ NO

If so, what are those promises?

16. Do you feel you have had sufficient time to discuss your case with your attorney?

☒ YES

NO

17. Have you told your attorney everything you know about the crime?

☒ YES

NO

18. Is there anything you have requested your attorney to do that has not been done?

☒ YES

☒ NO

If yes, please explain. _____

19. Your attorney can get various items from the prosecutor relating to your case. This may include police reports, witness statements, tape recordings, photographs, reports of scientific testing, etc. This is called discovery. Have you reviewed the evidence provided to your attorney during discovery?

YES

☒ NO

20. Have you told your attorney about any witnesses who would show your innocence?

☒ YES

NO

21. Do you understand that by pleading guilty you will waive any defenses, both factual and legal, that you believe you may have in this case?

☒ YES

NO

22. Are there any motions or other requests for relief that you believe should still be filed in this case?

YES

☒ NO

If so, what motions or requests? _____

23. Do you understand that if you enter an unconditional guilty plea in this case you will not be able to challenge any rulings that came before the guilty plea including: 1) any searches or seizures that occurred in your case, 2) any issues concerning the method or manner of your arrest, and 3) any issues about any statements you may have made to law enforcement?

YES

NO

24. Do you understand that when you plead guilty, you are admitting the truth of each and every allegation contained in the charge(s) to which you plead guilty?

YES

NO

25. Are you currently on probation or parole?

YES

☒ NO

If so, do you understand that a plea of guilty in this case could be the basis of a violation of that probation or parole?

YES

NO

26. Are you aware that if you are not a citizen of the United

States, the entry of a plea or making of factual admissions could have consequences of deportation or removal, inability to obtain legal status in the United States, or denial of an application for United States citizenship?

YES

NO

27. Do you know whether the crime to which you will plead guilty would require you to register as a sex offender? (I.C. § 18-8304)

YES

NO

28. Are you aware that if you plead guilty you may be required to pay restitution to the victims in this case? (I.C. § 19-5304)

YES

NO

29. Have you agreed to pay restitution to any other party as a condition of your plea agreement?

YES

NO

If so, to whom? _____

30. Is there a mandatory driver's license suspension as a result of a guilty plea in this case?

YES

NO

If so, for how long must your license be suspended? _____

31. Are you pleading guilty to a crime for which a mandatory domestic violence, substance abuse, or psychosexual evaluation is required? (I.C. §§ 18-918(7)(a), -8005(9), -8317)

YES

NO

32. Are you pleading guilty to a crime for which you may be required to pay the costs of prosecution and investigation? (I.C. § 37-2732A(K))

YES

NO

33. Are you pleading guilty to a crime for which you will be required to submit a DNA sample to the state? (I.C. § 19-5506)

YES

NO

34. Are you pleading guilty to a crime for which the court could impose a fine for a crime of violence of up to \$5,000, payable to the victim of the crime? (I.C. § 19-5307)

YES

NO

35. Do you understand that if you plead guilty to a felony, during the period of your sentence, you will lose your right to vote in Idaho? (ID. CONST. art. 6, § 3)

YES

NO

36. Do you understand that if you plead guilty to a felony,

during the period of your sentence, you will lose your right to hold public office in Idaho? (ID. CONST. art. 6, §3)

YES

NO

37. Do you understand that if you plead guilty to a felony, during the period of your sentence, you will lose your right to perform jury service in Idaho? (ID. CONST. art. 6, § 3)

YES

NO

38. Do you understand that if you plead guilty to a felony you will lose your right to purchase, possess, or carry firearms? (I.C. § 18-310)

YES

NO

39. Do you understand that no one, including your attorney, can force you to plead guilty in this case?

YES

NO

40. Are you entering your plea freely and voluntarily?

YES

NO

41. Are you pleading guilty because you did commit the acts alleged in the information or indictment?

YES

NO

42. If you were provided with an interpreter to help you fill out this form, have you had any trouble understanding your interpreter?

YES

NO

43. Have you had any trouble answering any of the questions in this form which you could not resolve by discussing the issue with your attorney?

YES

NO

I have answered the questions on pages 1-7 of this Guilty Plea Advisory form truthfully, understand all of the questions and answers herein, have discussed each question and answer with my attorney, and have completed this form freely and voluntarily. Furthermore, no one has threatened me to do so.

Dated this 15 day of March, 2013

Matthew Brooks
DEFENDANT

I hereby acknowledge that I have discussed, in detail, the foregoing questions and answers with my client.

[Signature]
DEFENDANT'S ATTORNEY

THIRD JUDICIAL DISTRICT
STATE OF IDAHO
COUNTY OF CANYON

FILED 3/15/13 AT 2:14P M.
CLERK OF THE DISTRICT COURT
BY [Signature], DEPUTY

STATE OF IDAHO,
Plaintiff,

-VS-

Matthew Brooks
Defendant,

Case No. CR-2012-12437*^C

ORDER FOR

CR-2012-12215*^C

- ☒ Conditional Release/Pretrial Services
☐ Release on Own Recognizance
☐ Commitment on Bond

IT IS HEREBY ORDERED the defendant abide by the following conditions of release:

☒ Defendant is Ordered released

☐ On own recognizance

☐ Placed on probation

☐ Case Dismissed

☐ Bond having been set in the sum of \$ _____ ☐ Total Bond

☐ Bond having been ☐ increased ☐ reduced to the sum of \$ _____ ☐ Total Bond

☐ Upon posting bond, defendant must report to the Canyon County Pretrial Services office as stated below:

☒ Defendant shall report to the Canyon County Pretrial Services Office and follow the standard reporting conditions:

☐ Comply with a curfew designated by the Court or standard curfew set by Pretrial Services _____.

☐ Not consume or possess alcoholic beverages or mood altering substances without a valid prescription.

☐ Submit to evidentiary testing for alcohol and/or drugs as requested by Pretrial Services at defendant's expense.

☐ Not operate or be in the driver's position of any motor vehicle.

☐ Abide by any No Contact Order and its conditions.

☐ Submit to ☐ GPS ☐ Alcohol monitoring as directed by Pretrial Services.

Defendants Ordered to submit to GPS or alcohol monitoring shall make arrangements with a provider approved by Pretrial Services, prior to release.

OTHER:

Defendant to be released on Monday 3/18/13 8:00 am

Failure by defendant to comply with the rules and/or reporting conditions and/or requirements of release as Ordered by the Court may result in the revocation of release and return to the custody of the Sheriff.

Dated: 3/15/13 Signed: _____

Judge

☒ White - Court

☒ Yellow - Jail/Pretrial Services

☒ Pink - Defendant

10/11

000149

FILED
A.M. 2:14 P.M.
MAR 15 2013

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
CANYON COUNTY CLERK
M POLLARD, DEPUTY

STATE OF IDAHO,

Plaintiff,

vs.

Matthew Brooks
Defendant.

CASE NO. CR 2012-12437 KC

ORDER TO REPORT TO
DISTRICT III PROBATION & PAROLE

YOU ARE HEREBY ORDERED TO report to the Department of Corrections District III Probation & Parole division to set an appointment for your pre-sentence interview and for the setting of interviews in connection with court ordered substance abuse or mental health evaluations.

WITHIN 48 HOURS, excluding weekends, you must report, in person, to their office located at 3110 Cleveland Blvd.; Bldg. D; Caldwell, Idaho; Phone (208) 454-7601.

IT IS NOT SUFFICIENT TO LEAVE A MESSAGE. YOU MUST PERSONALLY APPEAR AT THEIR OFFICE AND MAKE AN APPOINTMENT DATE WITH THE PRESENTENCE INVESTIGATOR. FAILURE TO DO SO WILL RESULT IN A WARRANT FOR YOUR ARREST.

Dated this 15 day of March, 2013.

[Signature]
District Judge

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be hand delivered to the defendant and served upon the following via U.S. Mail, postage prepaid, facsimile transmission or by placing in their out box located in the Canyon County Clerk's office:

/ CANYON CO. PROSECUTING ATTORNEY
1115 Albany St., Caldwell, Idaho 83605

DISTRICT III PROBATION & PAROLE
3110 Cleveland Blvd., Caldwell, Id 83605

/ CANYON CO. PUBLIC DEFENDER 510 Arthur Street, Caldwell, Idaho 83605

Private Counsel Name & Address

3/15/13
Date

[Signature]
Deputy Clerk

Copy to:

☒ Court ☒ Prosecutor ☐ Defense Counsel ☒ P & P ☐ Defendant

ORDER TO REPORT TO
DISTRICT III PROBATION & PAROLE

000150

12/13/2012

THIRD JUDICIAL DISTRICT, STATE OF IDAHO
COUNTY OF CANYON
CONTINUED HEARING

STATE OF IDAHO

Plaintiff

-vs-

MATTHEW O. BROOKS,

Defendant.

☐ True Name
Corrected Name:

) Case No. CR2012-12437-C
) CR2012-12215-C

) Date: May 6, 2013 / 2:15 p.m.

) Judge: Thomas J. Ryan

) Reported By: Kim Saunders

) Recording: DCRT4 (233-234)

) Hearing: sentencing

APPEARANCES:

☐ Defendant

☒ Prosecutor – Matt Bever

☒ Defendant's Attorney – Lary Slsson

☐ Interpreter -

☐ Other -

PROCEEDINGS: This matter shall be

☒ continued to the 7th day of May, 2013 1:30 p.m. before Judge Ryan.

☐ per stipulation of counsel ☒ at the request of ☐ State ☒ Defendant/Counsel

☒ to allow defendant to appear, had transportation issues.

BAIL: The Defendant was

☐ released on own recognizance (O.R.).

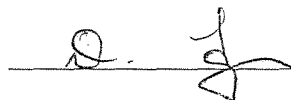
☐ remanded to custody of the sheriff.

☐ Bail set \$_____

☐ released to pre-trial release officer.

☐ released on bond previously posted.

OTHER:_____

_____, Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **THOMAS J. RYAN** DATE: **MAY 7, 2013**

THE STATE OF IDAHO,	)	COURT MINUTE
)	
Plaintiff,	)	CASE NO: CR2012-12437-C
	)	CR2012-12215-C
)	
vs.	)	TIME: 1:30 P.M.
)	
MATTHEW O. BROOKS,	)	DCRT4 (131-144)
)	
Defendant.	)	REPORTED BY: Kim Saunders
)	

This having been the time heretofore set for **sentencing** in the above-entitled matter, the State was represented by Mr. Matt Bever, Deputy Prosecuting Attorney for Canyon County, Idaho; and the defendant was present and represented by Mr. Lary Sisson.

The Court called the case and determined all parties had received / reviewed the Presentence Investigation Report and the GAIN-I assessment. Factual corrections were made to the Presentence Investigation Report.

Mr. Bever moved to dismiss the companion misdemeanor charge, recommended probation and presented argument. He requested an underlying sentence of one (1) year fixed followed by three (3) indeterminate and submitted on the issue of a withheld judgment. Mr. Bever requested restitution in the amount of \$100.00 for lab testing and submitted to the Court on any other terms and conditions of the sentence.

Mr. Sisson made statements about the defendant and presented argument in support of the Court granting the defendant a withheld judgment. He recommended a three (3) year period of probation, one hundred (100) hours of community service pursuant to statute and Level I treatment. Mr. Sisson believed the defendant had credit for forty-two (42) days served and requested no additional jail to serve, just discretionary jail granted to the probation officer.

The defendant made no statements to the Court on his own behalf.

The Court examined the defendant as to his residence and indicated it had no objection to an interstate compact with Oregon.

The Court granted the withheld judgment and placed the defendant on probation for three (3) years under the standard terms and conditions of probation, which were explained to him, and the following additional conditions: The defendant was ordered to pay court costs, reimburse the County for the Public Defender in the amount of \$350.00, and pay the monthly fee of supervision. The defendant was ordered to enroll in and successfully complete Level I treatment as recommended in the substance abuse evaluation. The defendant was not to purchase, possess, or consume any alcohol or enter into any business where alcohol was the primary source of revenue. The defendant was ordered to serve one hundred eighty (180) days in the county jail at the discretion of the probation officer. The defendant was ordered to complete one hundred (100) hours of community service.

In answer to Mr. Bever's inquiry and there being no objection from the defense, the Court ordered the defendant to pay restitution pursuant to the restitution order.

The Court provided the defendant a notice of his rights upon sentencing, which the defendant reviewed, signed, and returned to the Court.

Both of counsel returned their copy of the Presentence Investigation Report to the Court.

The defendant was released to probation.


Deputy Clerk

CT

FILED
MAY 08 2013
CANYON COUNTY CLERK
DEPUTY
MARY ANN MARTINEZ

arr

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

MATTHEW O BROOKS,

Defendant.

CASE NO. CR2012-12437

RESTITUTION ORDER

Based upon the judgment and sentence in this case, and the expenses of the victim on this matter, and pursuant to **Idaho Code**, Section 37-2732.

IT IS HEREBY ORDERED THAT THE DEFENDANT, MATTHEW O BROOKS, pay **ONE HUNDRED DOLLARS AND NO CENTS (\$100.00)** in restitution and that such restitution be paid to the Court to be distributed by the Court to the following victim(s):

Idaho State Police
Forensic Services
700 S. Stratford Dr., Suite #125
Meridian, ID 83642-6202

<u>Date</u>	<u>Lab Expense</u>	<u>Total</u>
7/20/2012	\$100.00	\$100.00

RESTITUTION ORDER

ORIGINAL
000155

Such restitution shall be joint and several with any other co-defendants who are ordered to pay restitution arising from the same occurrence or event.

There are no known co-defendants.

In cases where there are direct and indirect victims, restitution payments will be distributed to direct victims before indirect victims.

It is **FURTHER ORDERED** that pursuant to I.C. Section 19-5305, that forty-two (42) days after entry of this order, or at the conclusion of a hearing to reconsider this order, whichever occurs later, this order may be recorded as judgment and the victim(s) may execute as provided by law for civil judgments.

DATED this 7th day of May, 2013.

Thomas J. Ky
District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order for Restitution was forwarded to the following persons this 8 day of May, 20 13.

Prosecutor: Mailed _____ Court Basket ✓

Public Defender: Mailed _____ Court Basket ✓

Idaho State Police: Mailed ✓ Court Basket _____

Forensic Services
700 S. Stratford Dr., Suite #125
Meridian, ID 83642-6202

Felony Parole & Probation: Court Basket ✓

Dated: 5/8/13
CHRIS YAMAMOTO
Clerk of the District Court

By: [Signature]
Deputy Clerk

Idaho State Police Forensic Services
700 South Stratford Drive, Ste 125 Meridian ID 83642-6202 (208)884-7170

CL Case No.:	M20122082	Agency Case No.:	B12001578
Agency:	SP30 - ISP-PATROL		
ORI:	IDISP0300	Crime Date:	May 12, 2012

A F F I D A V I T

STATE OF IDAHO }
COUNTY OF ADA } ss.

1. That I am a Forensic Scientist II with Forensic Services and am qualified to perform the examination and draw conclusions of the type shown on the attached report;

3. That I conducted a scientific examination of evidence described in the attached report in the ordinary course and scope of my duties with Forensic Services;

5. That the case identifying information reflected in that report came from the evidence packaging, a case report, or another reliable source.

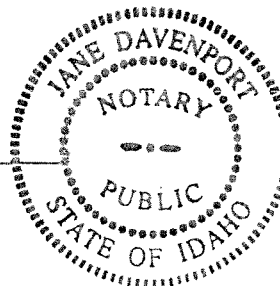
affidavit.

Corinna C. Owsley
Corinna C. Owsley
Forensic Scientist II

Date: 7/20/12

SUBSCRIBED AND SWORN TO BEFORE ME *20 July 12*

Notary Public, State of Idaho
Commission Expires: 5/13



000158



Idaho State Police Drug Restitution



As provided in Idaho Code 37-2732(k), the Idaho State Police requests restitution from the defendant(s), Matthew O Brooks in the amount of \$100.00 in association with Laboratory Report No. M20122082. This amount is based upon the confirmation of the following drug(s) being present in the sample(s) submitted to this laboratory. The amount requested reflects a portion of the cost incurred to the laboratory during the analysis of drug evidence.

Confirmed Drug/Analysis	Cost
1) Methamphetamine (1 sample confirmed at 100.00 each)	100.00
2)	
3)	
4)	
5)	
6)	

Please present this restitution request form and a copy of the laboratory report to the court at the time of sentencing.

Please make checks payable to: Forensic Services
700 South Stratford Drive Ste 125
Meridian, Idaho 83642-6202

Thank you for your cooperation in this matter.

Sincerely,

Natasha Wheatley
Forensic Services
Laboratory Manager

mh
July 9, 2012

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FILED
A.M. 4:17 P.M.

MAY 13 2013

CANYON COUNTY CLERK
D TORGERSEN, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,

Plaintiff,

-vs-

MATTHEW O. BROOKS,

SS# [REDACTED]

D.O. [REDACTED]

Defendant.

ORDER OF PROBATION ON
WITHHELD JUDGMENT

CASE NO. CR2012-12437-C

On this 7th day of May, 2013, personally appeared Matt Bever, Deputy Prosecuting Attorney for Canyon County, Idaho and the defendant, Matthew O. Brooks, and the defendant's attorney, Lary Sisson.

It appearing to the satisfaction of the Court that the ends of justice and the best interests of the public, as well as of the defendant, will be served thereby, it is Ordered that the Judgment be withheld on the defendant's plea of guilty to the offense of **Possession of a Controlled Substance**, a felony, as charged in the Information, a violation of Idaho Code Section 37-2732(c)(1), committed on or about the 12th day of May, 2012, in compliance with Idaho Code 19-2601, sub section 3, and that the defendant be placed on probation under the supervision and control of the Idaho State Department of Correction, Probation and Parole Division and this Court for a period of three (3) years commencing on the 7th day of May, 2013, under the following terms and conditions:

That the defendant shall: (a) violate no State, Federal, or Municipal penal laws; (b) not change residence without first obtaining written permission from the supervising officer; (c) submit a truthful written report to the supervising officer each and every month and report in person when requested; (d) not leave the State or the Judicial District assigned to supervise the defendant's probation without first obtaining written permission from the supervising officer; (e) seek and maintain employment or a

ORDER OF PROBATION ON
WITHHELD JUDGMENT

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program approved by the supervising officer, and not change employment or program without first obtaining written permission from the supervising officer; (f) waive defendant's constitutional right to be free from search and consent to the search of their person, residence, vehicle, or property at the request of the supervising officer or any law enforcement officer; (g) not purchase or possess any firearms or weapons; (h) not possess any controlled substances without a valid prescription; (i) submit to tests for controlled substances and/or alcohol at probationer's own expense upon the request of the supervising officer or any law enforcement officer; (j) follow the advice and instructions of the supervising officer; (k) execute a waiver of extradition.

SPECIAL CONDITIONS:

1. The defendant shall pay in the order listed each of the following sums as specified:
 - A. Court costs of \$17.50;
 - B. Victims compensation fund of \$75.00;
 - C. Pay restitution pursuant to the restitution order;
 - D. An ISTARS technology fee of \$10.00;
 - E. A fee of \$10.00 for deposit into the peace officers standards and training account;
 - F. A fee in the amount of \$350.00 to reimburse the County for the cost of the Public Defender;
 - G. An administrative surcharge of \$10.00 for deposit into the county justice fund;
 - H. A fee in the amount of \$10.00 for the Drug Violations Hotline;
 - I. A fee in the amount of \$30.00 for the Substance Abuse/Domestic Violence fund;
 - J. A fee in the amount of \$3.00 for the Peace and Detention Officer's Temporary Disability fund;

K. An emergency surcharge in the amount of \$100.00.

All of the previous stated amounts of money are due and payable to the District Court at a rate and schedule to be determined by the supervising officer.

1. Pay a monthly probation supervision fee as set by the supervising officer;

OTHER SPECIAL CONDITIONS

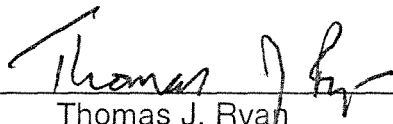
1. The defendant shall enroll in and successfully complete all programs of rehabilitation recommended by his supervising officer including, but not limited to programs on substance abuse, anger management, vocational rehabilitation, mental health, and self-esteem counseling;
2. The defendant shall enroll in and successfully complete all treatment as recommended in the substance abuse evaluation ordered pursuant to I.C. § 19-2524;
3. The defendant shall not purchase, possess or consume alcohol, nor enter into any establishment where the sale of alcohol is the primary source of revenue;
4. The defendant shall complete one hundred (100) hours of community service on a schedule to be determined by his supervising officer.
5. The defendant shall serve one hundred eighty (180) days in the Canyon County Jail at the discretion of his supervising officer and with the approval of the Court;

The Court had no objection to the defendant's probation being transferred via interstate compact to Oregon upon the approval of the defendant's supervising officer.

The terms of the defendant's probation may be revoked, modified, or extended at any time by the Court, and in the event of any violation of the conditions hereof, during the period of probation, the Court may revoke this Order and impose Judgment.

Defendant is subject to arrest without a warrant for violation of any condition hereby imposed.

DATED this 10th day of May, 2013.



Thomas J. Ryan
District Judge

I understand, accept and will abide by the terms and conditions of the above Order.

DATED this _____ day of _____, 2013.

Defendant

WITNESSED: _____

MARK J. MIMURA
CANYON COUNTY PUBLIC DEFENDER

LARY G. SISSON
510 Arthur Street
Caldwell, Idaho 83605
Telephone: (208) 639-4610
Facsimile: (208) 639-4611
Idaho State Bar No. 6072

Attorneys for Defendant

FILED
A.M. 3:00 P.M.

MAY 24 2013

CANYON COUNTY CLERK
B. MATFIELD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff/Respondent,

vs.

MATTHEW O. BROOKS,

Defendant/Appellant.

Case No. CR-2012-12437-C

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, THE STATE OF IDAHO, AND THE
CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, MATTHEW O. BROOKS, appeals against
the above-named Respondent to the Idaho Supreme Court from the following:

A. The Judgment of Conviction and Commitment that was filed in this
matter on or about May 14, 2013.

2. These matters were heard, and the Judgments were entered, in the Third
Judicial District, in and for the County of Canyon by District Court Judge Thomas J. Ryan.

NOTICE OF APPEAL

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3. A preliminary statement of the issues on appeal which the appellant intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal or amending issues listed below.

A. Whether the Court erred on or about September 19, 2012 by failing to grant Defendant's Motion to Suppress Evidence?

4. Appellant has the right to appeal all final judgments of convictions in criminal proceedings pursuant to Rule 11(c)(1) of the Idaho Appellate Rules.

5. Appellant requests a transcript, *in electronic form only*, of the following hearings in this matter:

A. The Motion to Suppress Hearing held on August 16, 2012.

6. In addition to the standard clerk's record on appeal, the Appellant requests the following:

A. Copies of all briefs, memorandums, objections, and responses to objections filed in this matter which were related to the Motion to Suppress; and

B. Copies of all exhibits admitted into evidence during the Motion to Suppress Hearing that was held on August 16, 2012.

7. I certify:

A. That a copy of this notice of appeal has been served on each Reporter of whom a transcript has been requested as named below at the address set out below:

Kim Saunders
c/o Canyon County Courthouse
1115 Albany Street
Caldwell, ID 83605

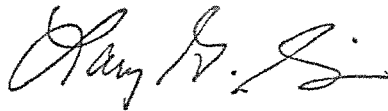
B. That the appellant is exempt from paying the estimated transcript fee because he is indigent.

C. That the appellant is exempt from paying the estimated fee for the preparation of the clerk's record because he is indigent.

D. That appellant is exempt from paying the appellate filing fee because he is indigent.

E. That service has been made upon all parties required to be served pursuant to Rule 20 and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code.

DATED this 24th day of May, 2013.



LARRY G. SISSON
Assistant Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on 24th day of May, 2013, I served a true and correct copy of the within and foregoing *Notice of Appeal* upon the individual(s) named below in the manner noted:

- ✓ By placing copies of the same in the designated courthouse box of the person(s) indicated below.

Bryan F. Taylor
Canyon County Prosecuting Attorney
1115 Albany Street
Caldwell, ID 83605

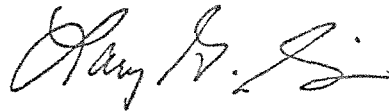
Kim Saunders
Court Reporter
1115 Albany Street
Caldwell, ID 83605

- ✓ By depositing copies of the same in the United States Mail, postage prepaid, first class, to the addresses of the person(s) indicated below.

Lawrence Wasden
Idaho Attorney General
700 W. State Street
P.O. Box 83720
Boise, ID 83720-0010

Matthew O. Brooks
1061 NW Briar Creek Way, #1227
Beaverton, OR 97006

State Appellate Public Defender
3040 N. Lake Harbor, Ste 100
Boise, ID 83703



LARRY G. SISSON
Assistant Public Defender

MARK J. MIMURA
CANYON COUNTY PUBLIC DEFENDER

LARY G. SISSON
510 Arthur Street
Caldwell, Idaho 83605
Telephone: (208) 639-4610
Facsimile: (208) 639-4611
Idaho State Bar No. 6072

Attorneys for Defendant

FILED
AM. P.M.
MAY 24 2013
CANYON COUNTY CLERK
B. HARRIS, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff/Respondent,

vs.

MATTHEW O. BROOKS,

Defendant/Appellant.

CASE NO. CR-2012-12437-C

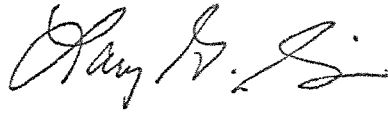
**MOTION FOR APPOINTMENT OF
STATE APPELLATE PUBLIC
DEFENDER**

COMES NOW, MATTHEW O. BROOKS, by and through the his attorneys of record,
the Canyon County Public Defender's Office, and hereby moves this Court for its order, pursuant
to Idaho Code §19-867 et. seq., appointing the State Appellate Public Defender's Office to
represent the Appellant in all further appellate proceedings and allowing current counsel for the
defendant to withdraw as counsel of record for the purpose of appellate proceedings. This
motion is brought on the grounds and for the reasons that:

1. The Appellant is currently represented by the Canyon County Public Defender;
2. The State Appellate Public Defender is authorized by statute to represent the
defendant in all felony appellate proceedings;

3. It is in the interest of justice for them to do so in this case since the defendant is indigent and any further proceedings on this case will be an appellate issue.

DATED this 24th day of May, 2013.



LARRY G. SISSON
Assistant Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of May, 2013, I served a true and correct copy of the above and foregoing *Motion for Appointment of State Appellate Public Defender* upon the individual(s) named below in the manner noted:

- ✓ By hand delivering copies of the same to the office(s) of the attorney(s) indicated below.

Bryan F. Taylor
Canyon County Prosecuting Attorney
1115 Albany Street
Caldwell, ID 83605

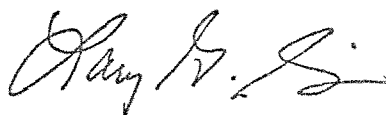
Kim Saunders
Court Reporter
1115 Albany Street
Caldwell, ID 83605

- ✓ By depositing copies of the same in the United States Mail, postage prepaid, first class, or

Lawrence Wasden
Idaho Attorney General
700 W. State Street
P.O. Box 83720
Boise, ID 83720-0010

Matthew O. Brooks
1061 NW Briar Creek Way, #1227
Beaverton, OR 97006

State Appellate Public Defender
3040 N. Lake Harbor, Ste 100
Boise, ID 83703



LARRY G. SISSON
Assistant Public Defender

MARK J. MIMURA
CANYON COUNTY PUBLIC DEFENDER

LARY G. SISSON
510 Arthur Street
Caldwell, Idaho 83605
Telephone: (208) 639-4610
Facsimile: (208) 639-4611
Idaho State Bar No. 6072

Attorneys for Defendant

FILED
A.M. P.M.

JUN 03 2013
CANYON COUNTY CLERK
B. RAYNE, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff/Respondent,

vs.

MATTHEW O. BROOKS,

Defendant/Appellant.

CASE NO. CR-2012-12437-C

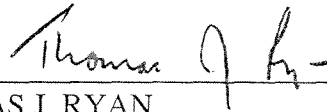
**ORDER APPOINTING STATE
APPELLATE PUBLIC DEFENDER**

THIS MATTER having come before the Court pursuant to Defendant/Appellant's Motion for Appointment of State Appellate Public Defender; the Court having reviewed the pleadings on file and the motion, the Court being fully apprised in the matter and good cause appearing;

IT IS HEREBY ORDERED that the Canyon County Public Defender is withdrawn as counsel of record for the Defendant-Appellant and the State Appellate Public Defender is hereby appointed to represent the Defendant-Appellant, MATTHEW O. BROOKS, in the above entitled matters for appellate purposes.

The appointment of the State Appellate Public Defender is for purposes of the appeal only.

DATED this 30th day May, 2013.



THOMAS J. RYAN
District Court Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on the 3 day of June, 2013, I served a true and correct copy of the foregoing upon the individual(s) named below in the manner noted:

☒ By delivering copies of the same to the designated courthouse boxes of the person(s) or entities indicated below.

Bryan F. Taylor
Canyon County Prosecuting Attorney
1115 Albany Street
Caldwell, ID 83605

Canyon County Public Defender
510 Arthur Street
Caldwell, ID 83605

Kim Saunders
Court Reporter
1115 Albany Street
Caldwell, ID 83605

Matthew O. Brooks
c/o Canyon County Public Defender
510 Arthur Street
Caldwell, ID 83605

☐ By depositing copies of the same in the United States Mail, postage prepaid, first class, to the following indicated below.

Lawrence Wasden
Idaho Attorney General
700 W. State Street
P.O. Box 83720
Boise, ID 83720-0010

State Appellate Public Defender
3040 N. Lake Harbor, Ste 100
Boise, ID 83703

*No envelopes provided
sent back to PD*

CHRIS YAMAMOTO
Clerk of the Court

By: *Blayne*
Deputy Clerk

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